minutes from now I shall call upon honourable members to proceed to the consideration of the Child Marriage Restraint Bill. At that moment no interpellation is admissible or can be admitted or can be discussed. That is another short and absolutely conclusive ground which will show that the honourable member's right of general interpellation cannot be granted. At question time the honourable member is not a member of the House and therefore the honourable member's rights now claimed do not exist. I therefore rule accordingly.

MR. E. JOHN PHILIPOSE: I should like to know whether the co-opted members of the House are entitled to sit in the House at question time.

PRESIDENT: That question has not been raised at question time. If it had been raised then I would have given a ruling. At present it is purely academical.

THE CHILD MARRIAGE RESTRAINT BILL.

PRESIDENT: The House will now resume discussion of the Child Marriage Restraint Bill. Clause 6 was under consideration when the House adjourned on the 19th of July and Mr. M.G. Matthew was speaking on amendment No. 38 to clause 6.

MR. M. G. MATTHEW: Sir, last time I was at amendment No. 38 moved by Mr. Varghese that proviso to Section 6 be deleted. Proviso to Section 6 says that no women shall be punishable with imprisonment. Clause 6 reads --

> "Where a minor contracts a child marriage, any person having charge of the minor whether as a parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punished with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both:"

I say that the proviso should be deleted. In doing so I am not unaware of the fact that I may be accused of being unchivalrous. When we legislate, when we try to bring a law into operation, certainly that has to be done with reason and consistency. That is the reason why I press this motion for the consideration of the House. I would even go to the extent of saying that no punishment by way of imprisonment need be contemplated in the law at all for the infringement of any of the provisions. But once an infringement is deemed fit to be punished, it should be effected in any case and it should be meeted out to man or woman without consideration of the sex for the following reasons.

No other law in the State makes any distinction between man and woman as far as punishment is concerned. Take for instance the Abkari regulation. Under the provisions of that law women are also equally liable to punishment. The only law in which there is a slight distinction is where it is an offence of murder where women are not liable to be hanged, *viz.*, the Penal Code, provides for the imprisonment of women. And that is no reason why a woman should not be subjected to imprisonment for infringement of the law.

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[Mr. M. G. Matthew :

Another reason is we were having certain memorials from various communities to the effect that they hold progressive views and that they do not wish to be discriminated against. They do not wish to be given a differential treatment. They are advanced in education. They are members of the Legislature. They have admission to all the services in the State. In fact they are given very fair treatment in regard to all these things and they may say that if in this matter any discrimination is made against them it will be an admission on their part that they are wanting in their sense of fairness or honour or capacity to suffer. That is another aspect we have to consider.

Apart from that, if the ladies of the State have been given privileges in all these departments and in other walks of life, I fail to see any reason why they should be exempted when the question of punishment comes as far as the Child Marriage Restraint Bill is concerned. Even there, Section 6 is not the only provision where imprisonment is meeted out as a punishment. There are four sections, *viz.*, Sections 3, 4, 5 and 6 which provide for punishment being given. According to Sections 3 and 4, if a child is married to a person and if the person is between the years of 18 and 21, the person is liable to a punishment with fine which may extend to one thousand rupees and if the person is above 21 he is liable to imprisonment or fine which may extend to one thousand rupees. Suppose a girl of 22 marries a boy of 17. It is not unnatural. A child marriage is celebrated in that case, and in that case the girl of 22 would be liable to be punished with imprisonment and there is no provision exempting her from that punishment. If that is the case, I fail to see any reason why a woman should not be punished with imprisonment under Section 6. Section 5 says—

> "Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage."

If according to that section a man or a woman who is directing a marriage is liable to be punished with imprisonment, I fail to see why a woman who is in charge of a girl or a boy allowing a child marriage should be exempted from imprisonment. In fact, this legislation is intended to avert a social evil. The House has accepted the principle of the Bill that it is with the object of preventing an evil that is undermining the health of the future generations and the Legislature should not be half-hearted in these things. They should be strong. The idea of the Bill is to keep the vigour of the nation in healthy conditions. That is one reason why I say that in the case of the woman who allows a ward to be married there should be no exemption from imprisonment.

Another thing. The courts before which this Regulation will go for interpretation in dealing with a case will have to see whether a legislation which is consistent with reason or which is inconsistent with reason has been passed. It is a fundamental rule of interpretation of

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statutes that the courts will try to give a reasonable meaning. But here what is the sort of regulation that we are going to have? Suppose a woman who allows a child ward to be married is sentenced to pay a fine of Rs. 100 and suppose she does not pay, either because she has not got the means to pay or because she wants to evade the punishment knowing that she will not be subjected to imprisonment. The court is absolutely helpless in the matter and it will not be able to enforce the law as against the delinquents. That would be a piece of law devoid of sanction and inconsistent with the fundamental principles of legislation and the Honourable Judges will say that the Travancore Legislature was not reasonable, especially when they made a provision exempting women from the punishment of simple imprisonment even in lieu of fine.

If punishment and imprisonment are to be meeted out either alternatively or concurrently, that is a matter for the presiding judge to decide. If a woman contravenes the provisions of the law outrageously, it is for the judge to give her a deterrent punishment. If there are extenuating circumstances to show that the woman is not the real person who did the wrong, that circumstance will be considered by the judge in giving the woman either punishment of fine or imprisonment from the facts of the case. It is for the judge to use his discretion. With these words, I also commend that the proviso to be deleted.

MR. E. SUBRAMONIA AIYAR: Sir, I support the amendment. I shall preface by saying that I shall not be accused for frankly saying what I really feel in the matter. Perhaps, I may be considered as being most unchivalrous, when I do that. In dealing with legislation relating to punishment, we should not be swayed by soft considerations for the softer sex. No doubt, women-folk are soft-hearted. We are alive to their subtle influences over us, men. Nevertheless, as my honourable friend the mover has pointed out, when we legislate, we should do it in a spirit of progressive rationalism. I do not know whether my sisters will approve of a piece of legislation which will bring about equality between man and woman. Probably, nowadays they do not like to be called the weaker sex, or the better-half. That is one of the re sons which suggests itself to me in supporting the amendment. In some of our prior legislations, no doubt, we have been very considerate to women. Probably, we were not able to appreciate their view-point in those matters. We thought that what according to us was the weaker sex required a certain amount of protection and preservation.

Now, we are living in a new age. Therefore, I would say that no distinction should be made between man and woman in the matter of punishment for an offence, especially, an offence relating to marriage. We should not be influenced by considerations of sentiment nor by the views propounded by women.

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[Mr. E. Subramonia Aiyar.]

Another rerson which appeals to me in this connection is this. No doubt clauses 3 and 4, which we have already passed, do not discriminate between man and woman and those clauses provide for punishment. But, the point in respect of those clauses, perhaps, was that it was thought that man alone would come within the meshes of clauses 3 and 4. But, the provision under clause 6 is different. At the first blush it may appear that the clause is aimed at man alone. When we deal with sex expression, unfortunately, Penal Code which deal with those matters, also catches hold only of man, and not the woman. I for one, certainly cannot subscribe to that proposition. In sex expression, certainly, man alone should not be made guilty.

Sir, this is an era of scientific advancement, and every day new progress is on the anvil. Therefore it is that, in the matter of sex expression, when you say that man alone should be made guilty, I turn round and say 'No". Considering that question deeply, from the scientific, physiological, and psychological view, I say "No." As I said at the out set, I must speak out my mind even at the risk of being called an unchivalrous man. I must say that in the matter of sex expression, the woman is more vigorous and more assertive than man. If that be so, certainly, if anybody is to be restrained or punished, it is the woman. If it is argued that marriage is after all only a preparation for sex expression and that we are now concerned here only with marriages and not with anything else. I say, even there, she must be restrained ; the woman must be punished and not the man. Certainly, it is at the time of such preparation, that restraint should be placed on the woman more than on the man. I never wanted to drag illustrations from history or Purana ; but when this matter was being discussed last time, my friend Mr. Sivatanu Pillai drew in the name of Rama and Sita and put me the question as to the age of Sri Rama when he married Sita, and as to the age of Sita also at the time of her marriage. My friend evidently forgot that Rama was a Kshatriya, about whom there is no controversy.

While I am at this point, I am reminded of a story that I studied from one of my gurus. When I was studying in the Intermediate class, he pointed out to me an occasion when he said I should exhibit the same spirit as that of Rama in religious matters. We must look to the constructive aspect of life rather than to the destructive side of it.

What is man, unless he has the woman by his side ? Take the example of Sankara. Without the power of female *Sakti*, he becomes *sava*, powerless. Without women, therefore, men have no place at all.

I am no believer, I may tell you, not only because of my profession but also because of my study. My friends know that, apart from my profession I have studied a good deal of technology also. Great men have showed how futile are our methods of inflicting punishment under our penal laws, punishments like imprisonment and solitary confinement are of no avail in reforming society. Therefore, once you

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resort to punishment, you cannot discriminate at all between man and woman; if you do discriminate it must be against the woman and not against the *man*. Sir, in matters relating to marriage, there is no harm in confessing. I ask my friends here, in the matter of bringing about marriages ordinarily, who is the more dominant individuals. Is it the father or the mother of the couple? You may say you are the master of your house. Of course, you are. But, in the case of marriage, I ask in all seriousness, whose voice is it that prevails, the father's or the mother's? I may suggest a boy who is stout and strong, and who is intellectually well-fitted. I may plead with my wife that that he is a very good boy to be our son-in-law. But my wife may say "If you are satisfied, I am not satisfied"; and in the matter of the marriage of your child, you would rather care to satisfy your wife's wishes than those of your own. That is the real state of affairs. I am not ashamed of confessing the real facts. I want my honourable friends to face the situation as fathers and mothers and as husbands. In matters of matrimony, in that particular sphere, whose voice is it that dominates? Is it your voice, or that of your wife?

MR. M. SIVATHANU PILLAI: May I know whether he would willingly have this speech of his read by women-folk outside?

MR. E. SUBRAMONIA AIYAR: Certainly.

PRESIDENT: The honourable member is aware that there is a lady member here.

MR. E. SUBRAMONIA AIYAR: You will not be able to stamp out as it were this so called evil unless the women are punished. Face the evil, and be strong in your conviction. Any legislation which ignores facts, is bound to be an utter failure.

SRIMATY T. NARAYANI AMMA: May I know, Sir, whether there is no time limit?

PRESIDENT: So far as bills are concerned, there is no time limit.

MR. E. SUBRAMONIA AIYAR: I will make my position clear. I have been so far emphasising only one aspect of the matter. I may add that any attempt to penalise persons, in this matter of bringing about marriages, either by imprisonment or by other means, would be of absolutely no avail because if people are bent upon marrying their children, they would gladly go to jail. So, once we are to go to jail for breaking this law, let us go to jail simultaneously with the woman; let us not be separated from our wives. I would appeal to the Government to construct homes for us in the Jail, so that we can stay there with our family. With these words, I heartily support the amendment.

MR. P. KUNJUKRISHNAN: In view of the statement made by the honourable member that, according to him, no punishment would be of any avail, is it not better that the proviso, which seeks to punish only men, is retained?

MR. E. SUBRAMONIA AIYAR: I do believe that such punishment is not the proper method of avoiding the so called evil.....

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PRESIDENT: That question of penology is, to a certain extent, irrelevant.

SRIMATY T. NARAYANI AMMA: I oppose the amendment for the reason that in such cases women *are* exempted from punishment. This soft consideration for the softer sex finds a place in the British Indian enactment. When this bill came up for discussion in the Central Assembly.....

PRESIDENT: The honourable member will kindly raise her voice.

SRIMATY T. NARAYANI AMMA: For several considerations, the softer sex finds protection in all matters of legislation, whether social, economic or political. We are, more or less, emulating the example of British India. When the original Bill, the Sarda bill, came up for discussion, there was not even a single member to oppose this provision; and it finds a place there. (Mr. M. Sivathanu Pillai: *Hear, hear.*) I may also point out that it is not desirable that the women should be imprisoned in such cases. Moreover it will be a severe drain on the Government to keep women in Jail. With these words, I oppose the amendment.

MR. K. R. RAMASUBBA SASTRI: With due respect to Mr. E. Subramonia Iyer and the other honourable member who moved the amendment, I may say that I am for the exemption of the softer sex from imprisonment. In fact, I am opposing the amendment. It appears to me that so far as this marriage question is concerned the angle of vision that is taken by most people are entirely wrong. Marriage question does not affect the male, or female. It mainly affects the children. It involves other facts and it is in connection with that that we must consider the question of marriage, both with reference to human laws, divine laws and nature's laws. With this preface, I would say that so far as the child is concerned, I would put the baby into three classes. The unwanted class, the baby that is heralded with all manner of rejoicings and the baby that is sought to be strangled even while in the womb. I would submit with due deference that when the bill is before the House we, members are at great difficulty because we are unable to give free expression to our views by observing the rules of decorum and propriety.

PRESIDENT: Does the honourable gentleman complain of that?

MR. K. R. RAMASUBBA SASTRI: Sir, in certain matters we have to talk on the psychology of sex rather freely. So, for that our freedom should not be restricted as the Vakils or Advocates who are arguing a case of rape should be given the full freedom to talk and deal with what is called indecent topics.

PRESIDENT: Order, order. In dealing with this amendment, presumably such intimate psychological details are unnecessary.

MR. K. R. RAMASUBBA SASTRI: Sir, I submit that to bring home the honourable members certain points, some detailed discussion, on psychological aspects of the question are also necessary. But in any case I will try to restrain myself. I have already said that I am a Sanatanist and as a Sanatanist I believe marriage is a sacrament.

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MR. M. SIVATHANU PILLAI: I should like to know whether the member has put on the cap because he is a Sanatanist?

PRESIDENT: The sartorial details are not relevant to the discussion in hand.

MR. K. R. RAMASUBBA SASTRI: Sir, I believe that all the religions are agreed that there is only one God whoever or whatever that might be. Similarly all religions are agreed that there is only one divine mother ruling the principle which governs the propagation of the species. So biologically speaking from the beginning of life (amoeba) to the highest form of creation that is Brahma there are only two principles governing, that is the divine Father and the divine Mother. Now therefore we have seen the importance of parenthood in this world. Moreover, Sir, the male and the female, I should say are really the protones and the electrons of the scientific world. So far as the scientist is concerned, a first living cell is created by the combination of the protones and the electrons. When that is so, how can you say that sex is an improvement made by the human being upon nature. That is what I want to emphasise. That is why I say that we have to consider the question of marriage not from the standpoint of the male nor from the standpoint of the female but from the standpoint of the baby. Sir, I think it was Hall Caine an eminent writer in England who had made this distinction between a baby who comes amidst the flourish of trumpets the unwanted baby. According to the Hindu ceremony, a birth of a child is an occasion for great rejoicings, and a baby who surreptiously enters the world and who is not wanted in the family brings shame on the mother or adds to the poverty of the family.

PRESIDENT: The honourable member will see that I am giving the fullest liberty for discussion on a matter of which there is great feeling. The question of unwanted children is not really relevant to the discussion and unless it can be explained properly to me, I cannot see the relevancy of that.

MR. K. R. RAMASUBBA SASTRI: May I submit that the unwanted baby is the most important factor in considering the question of marriage. There are three kinds of marriages in England. That is, the marriage by which the child comes amidst a flourish of trumpets, and a marriage due to a child being born on the wrong side of the blanket whose birth is legitimised subsequently, and marriage when the child is in the womb. During the course of the marriage a baby that is born on the wrong side of the blanket is put on the right side, Then again long after children are born, say; about 8 or 9 years afterwards, the parents get themselves married out of duty to the child and the child becomes legitimate. These are familiar aspects of the question to the legal members of this House. That is why I say that the woman should not be imprisoned. What I submit is that this unwanted child is most persistent in life. He is tried to be throttled, poisoned and done away with. What I would say is that imprisonment should not be meted out to woman for this. Now, I have already

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said that the age of puberty is the age sanctioned by nature for a girl to assume motherhood; and, generally this age is found to be eleven.

Sir, one has only to refer to the pages of "The Psychology of Sex" by Havelock Ellis, or "Compassionate Marriage" by Judge Lindsay of America, to find out the evil effects of late marriage of girls. All these authorities seem to agree that the girl should be given in marriage before the age of 14. But, Sir, this House was not willing to give an exception and allow that at least the betrothal may take place at the age of 8, 10 or 14. But I will have my say about that later on. If at the age of 14 alone girls are allowed to marry and if it happens that she has already passed the age of puberty and if she is suspected with child at that age to whom she will confide her secret? Certainly, Sir, to her mother alone. Sir, in all decent society this is a common occurrence. I know, as a matter of fact, many rich and influential houses are subjected to this scandal and they are suppressed by the prudence of the mother of the House. And as a result of this, unforeseen marriages take place in order to escape the opprobrium on the issue coming into the world. When the girl is at the disadvantage of being the mother, why should you want to put additional punishment on her or her mother. In all these matters, as I said, the question has to be considered not as between male and female but as pro ones and electrons, the male being an irresponsible animanal who scatters his seeds and goes away (*Laughter*) Nature makes the woman suffer. The woman cannot suppress the matter and she has to appear before the public big with the load of sin that she has committed. That is why the ancient Rishies were not fools to fix ages of 10 and 11 as suitable for marriage with regard to a girl according to the three castes, Brahmin, Kshatriya and Vaisya. We Brahmins are bound not only by the *Srutis* but by the *Smritis* also.

I submit that I may be allowed to read a few passages which are written by western savants that state that late marriages bring ruin to homes.

PRESIDENT: The question of late marriages and the age of puberty and consummation, these are matters which come up under other sub-sections. At the present time, the mover of the motion is considering the liability of imprisonment of the woman. I would invite the honourable member to confine his remarks at this juncture to that particular point.

MR. K. R. RAMASUBBA SASTRI: All these matters are dealt with to show that the woman should not be punished because of her sex and the fact that because she is a woman she cannot conceal the effect of an act (sin or crime) that has been committed.

MR. PUTHUPALLI S. KRISHNA PILLAI: Is the section intended to deal with girls big with children or women who are privy to child marriages?

MR. K. R. RAMASUBBA SASTRI: My point is simply this.

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PRESIDENT: I think the honourable member has made it perfectly clear. He need not repeat what he has already expatiated upon.

MR. K. R. RAMASUBBA SASTRI: As I said, the only confidence that the girls can expect is from their mothers.

PRESIDENT: The honourable member has explained that already.

MR. K. R. RAMASUBBA SASTRI: It is the mother who protects the girl. It must be remembered that you cannot conceal an unwanted child for 3 or more years. It is then no secret at all. It is called an open secret. If a fact gets known to six years, then it becomes an open secret. That is what our puranas say. But these secrets can be confided by the girl to her mother (only four years).

PRESIDENT: The honourable member's argument on that branch has already explained it.

MR. K. R. RAMASUBBA SASTRI: What I say is this. The women has to hasten the marriage of her child and see that it takes place before anything untoward happens. She has the protection of the honour and chastity of the girl at heart. That is why early marriage finds such a large place in our society. When once marriage takes place no kind of legislation could undo it. Of course, now-a-days human law can undo anything. The point that I am now urging is that the mothers should be allowed to protect the chastity of their children by performing their marriages at a particular age. It may be a sacramental marriage or it may be a legal marriage or it may be what is called the registered marriage. The mother has every right to see that it is done. As Mr. E. Subramonia Iyer pointed out, the male animal is only an animal to sign the cheque, so far as the marriage is concerned. The responsibility is with the mother. We should give her protection to see to the welfare of the girl, to protect the prestige and chastity of the girl. No doubt we are very angry with women because they have invaded our rights of earning. They are coming into every profession and invariably the courts consider them a weaker sex. If on these grounds, you what to inflict the terrible punishment which are meted out to men, then it is a very hard lot. Indra's sin was divided between water, earth, women and tree. So the women has to come in for this sort of punishment. Let us exempt her from a further punishment. It is only most proper that a mother should protect her honour and the chastity of her child. In fact our puranas say"—

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The cause of prosperity is modesty and plenty. Now, if these two qualities are lost, I say, the female is no female. She is then a male and you can trust her to protect herself and her children. But if these two qualities are there, we have the essential virtues of the women. It is those virtues that have kept the Hindu women happy. Many of the western writers say that the Hindu homes are happy and it is that Hindu home which is now sought to be invaded by notions of liberty,

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equality, etc. My own impression is that Sanathana Dharma is one which can stand the test of time. Man's life is, after all, very short and in truth, within that period all that he can do is to avoid the evil caused by the limitations of the body. So, we must be allowed to give a large share of freedom to the woman; so far as this particular aspect of the unwanted child is concerned, my prayer is that she should be allowed to protect the home by freeing her from the risk of undergoing imprisonment.

In this connection, I may point out that the civil law does not allow women to be imprisoned for debt. Then why should be imprisoned for this.

As a Sanatanist, I support the mover.

MR. P. S. NILAKANTA IYER: I support the amendment. The proviso in the Bill says that no women can be punished with imprisonment. In order that the women may be punished under the Section, she should be the person who is in charge of the minor. In considering whether exemption should be given or not, we have to find out what exactly is the legal liability imposed upon her. What does the section say?

In a joint family there are the father and the mother. But the girl usually will not be under the charge of the mother. It is the father who would be brought under the section. Where there is no father, the question of imposing the responsibility on the mother comes in. How far the woman is able to take charge of the minor does not arise. It is only when she is in charge of the minor that the section comes into operation. In such a case, being the custodian of the minor, if she performs the marriage, knowing the penal provisions of the bill, she must be liable to take the consequences of the law. The principle of penal law also does not make any distinction between man and woman so far as punishment is concerned, excepting in the case of sentence of death and that in Travancore. No doubt, the question of sex may be taken into consideration in awarding the actual punishment in particular cases. The matter of punishment is a consideration weighing with the judge. It is seen from Bentham's "Theory of Legislation" (Nandalal's P. C Volume I, on page 169) that "the same punishment for the same offence ought not to be inflicted upon all delinquents. It is necessary to pay some regard to the circumstances which appeal to sensibility and..... ...age, sex, rank, fortune and many other circumstances ought to modify punishment inflicted for the same offence". Then again, in Phillip's "Comparative Criminal Jurisprudence" on page 17 it is said: "circumstances which ought to enhance punishment are (1) the frequency of the offence, (2) the wealth of the offender". But some of the circumstances which are to be considered in alleviation are "(1) the minority of the offender, (2) the old age of the offender, (3) the condition of the offender, e. g., wife, apprentice, (4) the order of a superior military officer, (5) when the offence was committed under a combination of circumstances, and under the influence of motives

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which may not probably recur either with respect to the offender or to any other; (6) when offence has been caused by great provocation (7) the state of health and the sex of the delinquent must be considered in the nature and duration of imprisonment". It is therefore best that we may at present say that it should be a matter for the judge to fix the actual punishment. It is not necessary that we should take into consideration what exactly should be the nature of the punishment. It is not for us to fix the punishment in each case. A penal legislation should only fix the maximum punishment; and it should be the same for both men and women. The question of fixing the actual punishment to be awarded under law does not arise for the consideration of the legislator.

MR. M. SIVATHANU PILLAI: Sir, I oppose the motion.

PRESIDENT: You oppose the amendment.

MR. M. SIVATHANU PILLAI: Yes, Sir. I mean, I oppose the amendment. I was very closely listening to the speeches made by the honourable members Messrs. E. Subramonia Iyer and Mr. Ramasubba Sastri, the former in support of the amendment and the latter against the amendment. As I listened to the speech of Mr. E. Subramonia Iyer, it struck me that it was done with a very devastating effect. He was painting the womenhood as a whole as something not to be given a privileged place, not to be recognised at all. Sir, I must confess that the speech was really shocking to me. He had not even the tenderness and chivalry of man to recognise the place of women in society. He was able to argue out his position in his very able way. Nevertheless he forgot the real lesson that one is naturally expected to take from nature. In the course of his remarks, he safely forgot the lessons that he might have come across in nature. I wish to give him an instance in respect of doves or peacocks, to show whether the male is more guilty or the female. In respect of these two birds, the female is more guilty.

PRESIDENT: How is the behaviour of doves and peacocks relevant?

MR. M. SIVATHANU PILLAI: In the matter of sex expression, Sir.

PRESIDENT: Honourable member will confine himself to very narrow limits in that matter of sex expression. (*Laughter.*)

MR. M. SIVATHANU PILLAI: Sir, it has been argued that there is absolutely no justification to discriminate between male and female in the matter of punishments under law. I should think, Sir, my friends have been labouring on that point because according to them, it is an indirect way of arguing that there should be no restriction on the age of marriage. In the course of his argument, my friend Mr. E. Subramonia Aiyar had occasion to state that unwanted motherhood should be guarded against and that in such cases, almost the entire blame should be laid on the mother of the girl who, to save the odium attached by society to post-puberty marriages, would have more or less compelled her daughter to marry before puberty which marriage would

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have naturally led to premature delivery. That point, again, I submit is another indirect way of arguing that there ought not to be any restraint on the age of marriage.

Sir, as has been pointed out by the very able mover of the Bill, there has not been a single instance of any male member in the British Indian Legislature who raised this aspect of the question.

MR. M. G. MATTHEW: May I ask whether, in the British Indian Legislature, there was an amendment similar to the one now before the House?

MR. M. SIVATHANU PILLAI: No. I must admit, Sir, that *Sastris* seem to be more abundant here than in British India.

Sir, this is not a matter to be lightly dealt with. It is true that we have imbibed certain notions from western countries where women get absolute freedom in society. Among Hindus, Sir, womanhood is based on an entirely different footing; they are on a higher pedestral in society as it were. Although they are given a special place in society, such place is a very high place. Also, in the homes, they are not only the deities but are really the inspiring agency for men to live peacefully and happily in society. There is no wonder why Mr. E. Subramonia Aiyar referred to Sita and Panchali. But I must say, Sir, that in those cases the deluge came in not on account of Sita's persistence or Panchali's playfulness, but on account of the inspiration that man got in the company of women, the inspiration that he was able to draw from the women, the inspiration that he will be able to fight the whole world for the cause of the women. Certainly, Sir, the deluge was not due to the malevolence of the woman; that will arise only in the case of viragos and not ordinary women. Evidently, Sir, as I said, my friend did not like the principle underlying the present Bill. Certainly, I can understand that position.

MR. M. G. MATTHEW: Does the honourable member say that the Bill should be dropped?

MR. M. SIVATHANU PILLAI: Certainly not; I am a strong supporter of the Bill, and I want it to be passed as expeditiously as possible. Sir, once again I would point out that in British India no objection was taken to the retention of the provision now sought to be deleted. Sir, I do not think much argument is needed to oppose the present amendment. In the British Indian Legislature also there were two Sanatanists, so far as I know, at the time the Bill was under consideration; and they did not raise any objection to the provision. As a matter of fact any one who knows something of the ideals of womanhood in India would grant that women must be exempted from the operation of this provision for punishment.

With these words, I oppose the amendment.

MR. N. RAMAKRISHNA PILLAI: I support the amendment. In the first place it will remove an injustice. If the present clause in the Bill is allowed to remain, as it is, marriages will be performed against

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the provisions of the Bill, and the parties really responsible for the marriages will go scotfree. This measure does not make marriages performed in contravention of the provisions illegal; such marriages will continue to be regarded as legitimate marriages. Under this Bill a boy continues to be a child until the age of 18. Here is a proviso exempting women from imprisonment for violating the provisions of this clause. To me it appears that there is absolutely no justification for such exemption. It is very doubtful whether the proviso now under discussion would apply to clause 5. As it is, it is a proviso to clause 6. There are also other clauses in the Bill which provide for imprisonment, for instance, clause 5. I do not think it can be interpreted that this proviso will apply to those clauses. On that ground also it seems to me objectionable to allow this proviso to continue in the form in which it appears.

Sir, in the attempt to exempt women from imprisonment, the question of chivalry has been raised. Sir, there cannot be any question of chivalry in regard to a delinquent, one who has violated the provisions of law. In these days of equality of sexes, there is no room for this kind of discrimination between man and woman.

MR. M. SIVATHANU PILLAI: Am I to understand that the member does not make any difference between offences under penal laws and offences under special laws?

MR. N. RAMAKRISHNA PILLAI: No there is also another ground which I would urge in support of the amendment. We find that, ordinarily, criminal law applies to all and that, generally, no distinction is made between man and woman. It is therefore certainly unreasonable that woman alone should be exempted from punishments for offences under this regulation. From the way this proviso has been introduced, it would appear that men alone are to be held responsible for child marriages. Certainly that is not correct. I do not see why any such slur should be unnecessarily cast upon men alone. Under the Hindu Law the mother is entitled to give away her daughter in marriage, in the absence of the father, she has no need to request the nearest male relation to perform the marriage; and it will be admitted on all hands that there are numerous instances of girls being given away in marriage by their mothers. In those circumstances it is certainly very objectionable that women should be exempted from punishment. It does not stand to reason.

It has been pointed out that the proviso applies only to certain offences. So in this measure, a discrimination is made even between offences. In regard to offences under clause 6, the women is sought to be exempted from punishment. I do not think there is any justification for making that distinction. The proviso is therefore absolutely unnecessary I therefore support the amendment.

MR. S. CHATTANATHA KARAYALAR: Sir, I wish to make a few observations on this amendment. Speaking in support of the amendment, Mr. E. Subramonia Aiyar referred to the theory of sex expression, and from there he wandered into the theory of criminology. Sir, I do not think we need enter into the field of criminology or of sex expression. All that we need do is to read the provisions contained in

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[Mr. S. Chattanatha Karayalar.]

certain clauses which we have already accepted and compare them with the corresponding provisions in the British Indian Act. In our clauses 3 and 4, which we have already passed, we have made a departure from the principle embodied in the corresponding sections of the British Indian Act.

There, in Sections 3 and 4, only the male party to the marriage is penalised, and the female party is left alone. Section 3 lays down—"Whoever being a male above eighteen years of age and below twenty-one shall be punished", and under Section 4 "whoever being a male above 21 years of age shall be subject to imprisonment" and so on and so forth. But, in our clause 3, which we have already passed, we have provided—"Whoever being above eighteen years of age and below twenty-one shall be punishable..... ..." and in clause 4, "Whoever being above twenty-one years of age contracts a marriage ....." What I wish to point out is that we have already made a departure, in the principles embodied in Sections 3 and 4 of our Bill, from the corresponding sections in the British Indian Act and have provided for punishment being given to females also and also for their being punished with imprisonment. That being the case, I do not see why the same principle should not be extended to the provisions contained in clause 6 as well. That follows necessarily from and is a corollary to what we have already passed under clauses 3 and 4. This is the short ground on which I would support the amendment before the House. I do not express an opinion on the merits.

One of the grounds on which Srimati Narayani Amma opposed the amendment was that we are adopting the same provisions as are embodied in the British Indian Act. But, as I have pointed out, we have already made violent departures from the principles embodied in the British Indian Act and that is the reason why I would support the amendment tabled by Mr. Matthew.

MR. A. THANU PILLAI: May I know from the member whether his community is one in which child marriage is prevalent?

MR. S. CHATTANATHA KARAYALAR: I have not referred to any community, Sir.

MR. A. THANU PILLAI: I only asked for information.

MR. KOTTALIL P. ABRAHAM: I support the amendment. The proviso which is intended to be deleted by the amendment reads thus:—

"Provided that no woman shall be punishable with imprisonment."

To understand the real meaning of the proviso we have to understand also the substantial clause which reads thus;

"Where a minor contracts a child marriage, any person having charge of the minor whether as a parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punished with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees, or with both."

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Now from the substantial clause we find that all people who are in charge of minors contracting unlawful marriage are liable to be punished. There is no question that all people who are responsible for such unlawful marriages must be punished. The punishment may be either simple imprisonment which may extend to one month or fine which may extend to one thousand rupees or both. Now the proviso says that no woman shall be punishable with imprisonment. As I understand it, it does not intend to exclude women from all sorts of punishment. On the other hand it intends to exclude women only in so far as punishment with imprisonment is concerned. The proviso does not say that the women responsible for such illegal marriages shall not be punished with fine. So there is no question in the matter of punishing women. But if the proviso stands as it is, it will only mean that women may be punished with fine but not with imprisonment. Keeping the proviso as it is, I think, it will serve no purpose but to defeat the purpose of the substantial clause. The result will be that any women infringing the provisions of this clause can do it with impunity and go without any punishment at all. If the substantial clause is retained as such, the proviso has certainly to be deleted.

There may be cases in which women alone will be responsible for conducting such marriages. There may be widowed mothers who are responsible for the marriages of minor children. Apart from that, there is another way of defeating the whole provision, if such a proviso is maintained. In certain cases, the males who are really in charge of the minors may go away for a time and leave the custody of the children with mother or other adult female member of the family. The plea would be that the male was not at home and the plea of the women conducting the marriages will be that the person responsible is the male and that women are exempt from punishment. The males on the other hand might have gone away from home, expecting the marriage to be conducted in an unlawful manner and with impunity by the female members, while they themselves deliberately connive at it. Thus neither the woman nor the man shall be punishable. For these reasons I submit that if the proviso is maintained as it is, the object of the substantial clause will be defeated. It may be said that women infringing this clause will be liable to punishment with fine. But unfortunately under our civil law no women can be arrested or imprisoned in the civil jail. Considering all these circumstances, I submit that the proviso has to be deleted.

I do not propose to examine the questions of chivalry or the relative strength and capacity of males and females for doing evil or good which are raised in the course of discussion of my honourable colleagues. I only add that it is now too late in the day to treat women differently from men.

MR. JOSEPH VITHAYATHIL : I also support the amendment. I have made it clear that I am not in favour of the Bill; but if we want to legislate we must see that the legislation becomes effective. If the proviso stands, it is very easy for a man who is responsible for a child marriage to throw the whole blame upon the mother of the girl. Now

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[Mr. Joseph Vithayathil]

the Section, as it is, makes a person liable only if he does any act to promote the marriage or negligently permits it to be solemnized. So long as the mother cannot be imprisoned and since in almost all cases it is not likely that any amount by way of fine can be realised from women, it is only in very few cases that women own properties the man who wants to evade the provisions of the law can throw the whole burden upon the woman and escape punishment. He can create evidence to show that he was not in favour of the marriage, and may afterwards come forward and say that he was not responsible for the marriage. He might even issue a registered notice to the mother of the child saying that he is against the marriage. It will not be difficult for him to make a few people swear that he was not in favour of the marriage. In such a case how can the court come to the conclusion whether it is the man or the woman who is responsible for the child marriage? If it is not proved that the man was responsible for the marriage, the provision of law becomes in fact infructous.

MR. P. KUNJUKRISHNAN : May I know from the member who is responsible for the marriage of the children?

MR. JOSEPH VITHAYATHIL : It is the person who is in charge of the minor and who does some act relating to the marriage or who negligently fails to prevent it. An overtact or at least a negligent omission is necessary. It is not enough if you prove that the child was under the custody of a man or a woman. Is it after all difficult for a man to come forward and say that he was against the marriage and that it was conducted by the mother? He can easily bring in witnesses to swear that the marriage was due to the desire of the mother and since the mother will be found very often to have no property at all in her name for the payment of the fine, the provision of law will be successfully evaded. If you want to legislate, you must make the legislation effective. I cannot attach much important to the argument that there is similar provision in the British Indian Act. It is our privilege that in the matter of equality of sex we are more advanced than our brethren in British India. Apart from considerations of chivalry we have to consider the practical working of the legislation. So I am fully in support of the amendment.

MR. P. KUNJUKRISHNAN : Sir, I oppose the amendment. The member who just now spoke said that it was very easy for the husband to shift the burden on to the wife and thus evade the punishment. To me it appears that when the father and mother are alive, it is generally the father that is taken to be responsible for the marriage of his daughter. That is what prevails in society.

MR. M. G. MATTHEW: Who is responsible in case the father is dead?

PRESIDENT: The House will now adjourn and meet again at 2 P. M.

The House adjourned for lunch at 1 P. M. and re-assembled at 2 P. M.

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MR. P. KUNJUKRISHNAN: As I said, generally, it is considered that the father in a family is responsible for the marriage of his daughter. We were told that in the Indian Legislature nobody raised any objection to the retention of such a proviso and that no amendment was moved to this proviso in the Sarda Bill. That shows the trend of opinion outside Travancore throughout British India. We know, as a matter of fact, there is real difference between man and woman in all spheres of life, one honourable member who spoke in support of the amendment said that he is a sanathanist; and a sanathanist is one who attaches sanctity to womanhood and who advocates for giving special treatment to women. The Smrithis that were quoted here enjoin that woman should not be given freedom. Thus woman has been much wronged so far. That is all the more the reason why a certain amount of sympathy and consideration is to be shown to the woman in the matter of legislation and as an instance I may point out that woman is not given capital punishment in the state. That shows that we admit the position of woman in society as one which deserves special consideration being shown by man. Moreover, this is a social legislation and therefore it is all the more necessary there should not be a strict adherence to the enforcement of punishment. It is up to this House to proceed in accordance with sanctity attached to the woman and see that women are given a differential treatment. With these words, I oppose the motion for the deletion of the proviso.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, on this question, the Government, as I said on an earlier occasion, propose to remain neutral. But, I think a few words of mine would be of use in deciding the question now before the house. There appears to be some misconception in regard to the principle which justifies the retention of the proviso. Various theories have been advanced here for the purpose of showing that there should be no distinction between man and woman in the matter of punishment. Sir, the law has always maintained a distinction between man and woman in regard to various matters. Under Section 45 of the Civil Procedure Code, it is provided that no woman shall be arrested in the execution of money decree and incarcerated in a civil jail. I ask the reason why this Legislature at one time thought that there should be a distinction maintained between man and woman in regard to incarceration in civil jail. I shall say another point. Where the punishment awarded to two individuals or rather to two classes or two groups does it not always depend upon the question of sex or sex alone. There are certain offences which are punishable with fine alone, some others with fine and imprisonment, and yet a third with imprisonment of either description etc. In this particular, case, the honourable member Mr. Karayalar pointed out, the Select Committee wiped out the distinction that is maintained in British India under Sections 3 and 4 between man and woman in regard to punishment, and said that no such distinction should be retained under clause 6 though clauses 3 and 4 no doubt bring within their ambit the case of man and woman also. We will read that section and see in how many cases such convictions could be entered against a female.

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[Mr. Puthupalli S. Krishna Pillai.]

"Whoever, being above eighteen years of age and below twenty one, contracts a child marriage shall be punishable, with fine which may extend to one thousand rupees"

No distinction is made between man and woman on the question of imprisonment. As a matter of fact, imprisonment does not arise under this Section. We will look at clause 4.

"Whoever being above twenty one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both".

Now a woman who is above 21 years of age, in order that she may be punished under this Section must enter into a marital relationship with a man below 18 years. The case of woman above 21 marrying a man below 18 are not impossible.

But it is clear that such cases would be very rare. Not even one out of 100 we come across. All the same we may take it that such instance is 1 per cent. The law then does not say that the case of woman should be leniently treated. Then coming on to clause 5, it read thus :

"(i) Where a minor contracts a child marriage, any person having charge of the minor whether as a parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punished with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both :

Provided that no woman shall be punishable with imprisonment.

(ii) For the purpose of this section, it shall be presumed, unless and until the contrary is proved, that, where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised.

Let us take the case of a family consisting of a father, mother and a daughter who is married. While explaining clause 6, it was stated here that the mother is the deciding factor in marriage in a Brahmin family. It is the mother who according to some members, says that this girl shall be married and the father immediately agreed as if he has no controlling voice in the matter. Taking however the case of an ordinary family, we find that it is always the voice of the father or rather paterfamilies that prevails. It may possibly be very good for public oratory to plead that such and such a man is always subjected to the directions of his wife. But in ordinary practice, as lawers are persons conversant with everyday habits of man and woman in our State, we must take it that in a case where a marriage is performed and where both the father and mother are the consenting parties, it is

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always the father's voice that predominate and not that of the mother. In 99 cases out of 100, ordinarily, the wife yields to the wishes of the girl's father. I may say that in a large majority of cases it is the voice of the male that prevails over that of the female.

MR. K. T. THOMAS: Are we legislating for 99 per cent. of the cases or for all ?

MR. PUTHUPALLY S. KRISHNA PILLAI: We are legislating for the vast majority of cases and that is the principle contained in legislation. There might be a few who might be affected adversely by any legislation whatsoever. But in doing so, the Legislature considers the question of betterment to a large majority. Therefore, to attribute the entire blame to the mother is not a correct view to be taken. In former days the saying was "Unto death we shall not part". This was extended in some cases where even after death, the wives were not allowed to part from their husbands. Even in the other world the husbands desired the consortism of their wives. The system of *sati* depended on this theory. As English jurisprudence does not recognise this a new sanatanist doctrine is advanced here that if the husband goes to jail and undergoes imprisonment he does not want his wife to sit at home. That is to say, he wants to drag his wife also to the jail. That, I submit, will not be a correct view of things,

MR. E. SUBRAMONIA AIYAR. Then is it the member's view that a husband and wife should be separated?

MR. PUTHUPALLI S. KRISHNA PILLAI: We would very much desire that the wife does not go. If the wife can be left at home while the husband goes to jail, so much the better. The law must adhere so that principle. The principle, namely, because the husband goes, wife also should go is one which cannot be accepted in modern legislation. In an ordinary case, where the minor daughter's marriage is celebrated, who is the person to be blamed? Who is the greater of the two culprits? The husband blame the wife. He will say that but for the wretched woman, such a marital alliance would not have taken place. But we know that it is the husbands voice that always prevails. But, Sir, on that question, it is not possible for me to express an opinion. Any way, I leave it there. I am only dealing with the generality of cases of people and say what ought to be the rule. There may be exceptions. I do not deny that. But to plead that a hen-pecked husband or a husband who is being led by the nose by his wife, should have his wife dragged along with him to jail for the offence committed by him probably as revenge is a point which does not commend itself to me.

MR. E. SUBRAMONIA AIYAR: Is the member speaking from a knowledge of the conditions obtaining in the Brahmin family ?

MR. PUTHUPALLI S. KRISHNA PILLAI: That is why I said I am unable to voice the view of Government and I am not speaking on behalf of Government as the Legal Remembrancer I am entitled to speak the views which ought to be held. The correct view to be taken is.....

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MR. K. R. RAMASUBBA SASTRI: May I know whether the member is representing the views of the Hindu community or the Brahmin community.

PRESIDENT : Order, order. The position of the Advocate-General or the Legal Remembrancer in Legislature has been often dealt with. It is only to the extent to which and in so far as he purports to speak on behalf of Government, that Government is bound by his views. The Legal Remembrancer or the Advocate-General can mention his own views not binding Government as a consequence of these views.

MR. PUTHUPALLI S. KRISHNA PILLAI: So then, Sir, to say that because there are husbands who yield to the wishes of their wives and who are guided by the dictates of their wives, it should not be stated that all women should be treated on that footing and all males dealt with accordingly. Take the case of an ordinary family and consider how things are managed there. In a case where a Sanatanist husband who is imbued with the ideals and principles of the *sruties* and *smrities* wishes that he wants to have his daughter to be given in marriage before 12, let us see what the position of a mother is. Has she any idea about the Smrithi or the Sruthi? Does she know why it should be so or why it should not be so? If a father who is imbued with the idea of the Smrithi or the Sruthi were to go on pestering and insisting on giving the daughter in marriage what can the mother do? He will not only carry the point, but even drag the wife to the jail. That is the position of some of the members who advocate this principle. Such a position cannot be supported.

MR. K. R. RAMASUBBA SASTRI: Is it the member's opinion that there should not be any exchange of views between the father and the mother?

MR. PUTHUPALLI S. KRISHNA PILLAI: There should be exchange of views between the husband and the wife. Consider the position of a woman who has got a Sanathanist husband and who wants to see that his daughter is married. But does the Smrithi or the Sruthi say that the wife should undergo imprisonment? So far as I can see, there is nothing in the Smrithi or Sruthi that when the husband undergoes imprisonment, the wife should also accompany him and be in jail.

MR. K. R. RAMASUBBA SASTRI: Will the honourable member enlighten us as to why Savitri followed Sathiyavan even to the gates of Yama?

PRESIDENT : The Legal Remembrancer cannot be regarded a final authority on that particular incident.

MR. A. THANU PILLAI: He is not speaking as Legal Remembrancer but is expressing his own views. So he might know.

MR. PUTHUPALLI S. KRISHNA PILLAI: My friend might say why did several young women offer themselves body and soul on the funeral pyre of their husbands dead bodies. There are hundreds of Savitrys who are victims of what is called *Sathi*. Is it the view of the honourable members that that should be permitted in Travancore? I think

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that argument will be an argument which will not be acceptable to the majority of members of this House. From the point of view of Government also I can more or less say that Government will not tolerate or encourge such a husband insisting upon his wife following him wherever he goes, even to jail.

MR. K. R. RAMASUBBA SASTRI: Will the Government prevent the wife from going to jail?

MR. PUTHUPALLI S. KRISHNA PILLAI: There is no compulsion.

MR. A. THANU PILLAI: In a case like that, is it not the person who is in charge of the minor that is to be punished. When both the parents are alive, will not the liability fall on the father alone? ".... Any person having charge of the minor whether as a parent or guardian or in any other capacity, lawful or unlawful....."

MR. PUTHUPALLI S. KRISHNA PILLAI: There may be cases in which persons may be jointly in charge of the minor. If the expression were "who is the guardian" I could have understood. Under all systems of law; Hindu Law, or Marumakkathayam Law, it is the father who is the guardian. The father and mother may be in charge of the girl.

MR. A. THANU PILLAI: Can't it be the servant of the house?

PRESIDENT: The section as is worded is very wide. "..... ...Any person having charge of the minor whether as a parent or guardian or in any other capacity, lawful or unlawful....." It might be a temporary custody, as the Section is worded.

MR. PUTHUPALLI S. KRISHNA PILLAI: One point which I wanted to emphasise is this. The British Indian Legislature has taken a very lenient view with regard to the females who are convicted under this section. If it were a privilege that is to be conferred on woman I could have understood it. Should our legislature insist upon taking away a privilege that the Indian women enjoy outside Travancore and subject our women to a harsher penalty.

MR. M. G. MATTHEW: Suppose a woman wishes to have her daughter married before the prescribed age and she has no property, what will be the way of punishing her?

MR. PUTHUPALLI S. KRISHNA PILLAI: For the purpose of realising fines, there is a certain procedure prescribed in the Criminal Procedure Code.

MR. M. G. MATTHEW: Suppose she is not possessed of any property how will Government realise the fine?

MR. PUTHUPALLI S. KRISHNA PILLAI: That is a thing that has to be decided when the question comes.

MR. M. G. MATTHEW: Should we not make clear what he sanction of the law would be?

MR. PUTHUPALLI S. KRISHNA PILLAI: The sanction of the law is that the fine should be realised from her. If realisation cannot be made except by putting her in the jail, if that is permitted under the Criminal Procedure Code, she may be put into jail. Where is the harm, I ask for a person who is unable to pay the fine to escape the liability? What is the harm in one female escaping?

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MR. M. G. MATTHEW: Does it not infringe the provisions of the law if the woman is allowed that freedom?

MR. PUTHUPALLY S. KRISHNA PILLAI: In several cases where fine alone is imposed, there are some people who are unable to pay the fine and they are allowed to escape.

MR. M. G. MATTHEW: May I know which law is that that enables a person to escape imprisonment like that?

MR. PUTHUPALLY S. KRISHNA PILLA: This is the one.

MR. M. G. MATTHEW: No other.

MR. PUTHUPALLY S. KRISHNA PILLAI: Yes, I have explained my position. The British Indian Law has taken the general view of things into consideration, the probabilities and has provided a particular mode of punishing females.

The amendment was put to vote and declared carried.

SRIMATI T. NARAYANI AMMA: I demand a poll.

A poll was taken and the House divided as follows.

AYES—16.

1	Mr. A. J. John	9	Mr. G. P. Nilakanta Pillai
2	,, Joseph Vithayathil	10	,, N. Ramakrishna Pillai
3	,, T. C. Kesava Pillai	11	,, P. J. Sebastian
4	,, M. G. Mathew	12	,, E. Subramonia Iyer
5	,, P. Nanoo	13	,, A. Thanu Pillai
6	,, N. Narayana Kuaup	14	,, K. T. Thomas
7	,, K. Narayanaperumal Nadar	15	,, E. P. Varghese.
8	,, P. S. Nilakanta Iyer	16	,, T. M. Varghese

NOES—16.

1	Sahib Bahadur V. Chandamiah	9	Mr. Tariathu Kunjithommen
2	Mr. S. Chattanatha Karayalar	10	,, P. V. Mathai Chemparathy
3	,, E. E. Pandarathil	11	,, S. Narayana Pillai
4	,, D. Francis.	12	Srimati T. Narayani Amma
5	,, K. C. Karunakaran	13	Mr. Codiveetil C. Raman Kunju
6	,, K. Kesavan	14	,, K. R. Ramasubba Sastri
7	,, T. T. Kesavan Sastri	15	,, P. Sivarama Pillai
8	,, Kaviyoor K. K. Kochukunju	16	,, M. Sivathanu Pillai

NEUTRALS—12.

1	Mr. K. J. Cheriyan	7	Mr. C. O. Madhavan
2	,, A. Gopala Menon	8	,, K. R. Narayana Aiyar
3	,, M. Govinda Pillai	9	,, M. K. Nilakanta Iyer
4	,, C. R. Harler	10	,, P. Parameswara Pillai
5	,, Puthupalli S. Krishna Pillai	11	,, M. Ramachandra Rao
6	Sahib Bahadur P. K. Kunju	12	,, P. Raman Pillai

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MR. A. THANU PILLAI: Sir, this is an important social legislation. Why not allow the officials to vote as they like instead of insisting on them to vote in a particular way?

M. PUTHUPALLI S. KRISHNA PILLAI: On behalf of Government I said that the official members will remain neutral.

PRESIDENT: The result of the voting is, *for* the motion 16 *against* 16, and *neutrals* 12.

Under the Rules, I have to give my casting vote; and in so doing I have two considerations to be born in mind. Firstly if there is going to be a social legislation of this kind in this country it must be uniform as far as possible with similar legislations outside; because this is a matter in which people within and without the State have necessarily a great deal to do with each other. Secondly, the law generally applicable to women in other matters may apply to them under this Bill also. On a reference to the Civil Procedure Code, I find that woman in this country are not liable to be arrested for debt. There are also other examples. Therefore on these two grounds, I give my casting vote in favour of the retention of the proviso,

The proviso, therefore, stands.

PRESIDENT: I find however, on a consideration of the matter, that the Proviso as it is worded may give rise to difficulties later on; that is a matter for the honourable members to consider, and the Lawyer members of this House would realise what such difficulties are. It has been ruled by strong Benches both in England and America that if a proviso is repugnant to the general text of the bill it should be given a most restrictive interpretation. I am pointing it out to the House so that it might not be suggested later that this point was not fully borne in mind when the House enacted this provision.

MR. E. SUBRAMONIA AIYAR: Sir, I move that sub-clause (ii) of clause 6 may be deleted. The sub-clause as it stands runs as follows:

> "For the purpose of this section, it shall be presumed unless and until the contrary is proved, that, where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised."

I am aware Sir, that there are a few sections in the penal code for negligence, rashness and things of that category. It is very seldom that negligence is made penal. It must first of all be ascertained whether negligence is subjective or objective. In most cases negligence is alway's objective. And it is alway's very difficult to find the precise amount of care which a person should take under particular circumstances. Law books and the reported decisions contain plenty of cases where justice is extremely difficult to be meted out in cases where it is not possible to judge definitely whether the conduct of a person has been negligent or otherwise. Even in the matter of civil libelling, so far as I am aware, it is only in exceptional cases that any presumption of negligence is drawn *viz* the cases where the maximum "*Res Ipso Loquitur*" applies.. But the general rule of law does not allow to charge a man or to hold him liable for negligence. Negligence should be proved as a fact by the person who asserts that a particular person

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[Mr. E. Subramonia Iyer.]

has been negligent, the fact and circumstances, and the situation have to be proved. Now the present provision is that whenever a child marriage has taken place, if the party is a minor, the parent, or guardian or some other person having charge of that minor in a lawful capacity or unlawful capacity should be presumed to be negligent. I am remainded in this connection of the rule in Rylands vs Fletcher. There it was held by the House of Lords that if a person brings or accumulates on his land anything which if it should escape may cause damage to his neighbours, he does so at his peril. If it does escape and cause damage, he is responsible, however careful he might have been, and whatever precautions he might have taken to prevent the damage. In other words, whoever brings upon his premises things, animate or inanimate, that may escape and cause danger to persons.....

PRESIDENT : That doctrine applies only to wild animals.

MR. E. SUBRAMONIA AIYAR : Sir, I raid. " animate or inanimate" say electricity, water, fire, etc. Whoever for his own purpose brings upon his premises things animate or inanimate which may escape with disastrous consequences to the persons in the vicinity, does so on his liability to punishment. If this sub-clause would stand part of the Bill it might be said that one keeps his minor children at his own risk and minor children also would be included among dangerous animals or dangerous things. Now, if these children escape and commit marriage, the parents or their guardians are held liable. Certainty, if you are going to legislate to prevent child marriages, you must see that nobody commits child marriages. If that is accomplished, well and good. But if you have got a minor in your charge and the minor escapes from you and gets himself (or herself) married, the provision here says that you would be considered negligent, and brought to book. I think if you want to escape from this liability, you will have to construct an iron cage and keep your minor girls and boys in that cage, under lock and key.

MR. E. JOHN PHILIPOSE: May I know from the member whether Rylands vs. Fletcher would apply to human beings?

MR. E. SUBRAMNIA AIYAR : There are so many other cases which I can cite to substantiate my argument. To proceed to what I was saying, if you just confine these children in cages assuming that they are dangerous animals, then you can very well escape the liability under this Bill. But I do not know whether the law permits me to inprison my children. So I am now in the horns of a dilemma. If that would amount to wrongful confinment, I do not know how we can escape from this liability. In respect of these dangerous things, animate or inanimate, we will have to exercise a certain amount of control. To assume that these children will not escape from you till they attain the age of 18 is too much, and it is placing a very heavy burden on any person which I am afraid he may not be able to bear. Sir, I am only emphasising this aspect of the matter with this object in view. The logical consequence of this legislation will be that there may be escapades on the part of young girls and boys for which their parents or

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guardians will be punished, That is unjust. Therefore, what I would ask this House is 'why should there be and legislation like this in Travancore' ? Why should all these matters be placed on the floor of the House for legislation ? No doubt, I am well aware of similar legislations, rulings and decisions and dictums, in New York, in England, in France and in British India. But conditions prevailing elsewhere may not be the same is those obtaining here.

When a matter is placed before the Legislature, it is not enough if you say that there are other legislations in existence in some other part of the country. On one occasion a learned Judge put a question to me when I was arguing a case. "Well Mr. Subramonia Iyer, in Madras and Calcutta this question has arisen, but this particular aspect of the matter has not been dealt with". Well, what is the reply that one can give. No doubt, it might not have struck them at that time. Sir, wisdom is not the monopoly of any particular individual or particular tract. In British India the requirements of the people are probably different. If you go into the temprament of the matter, we do not know the influence, the currents and undercurrents which might have prompted them to effect a provision of this kind. If you go deep into the matter youwill find various considerations which weighed with the legislatures there. But we are living in a different atmosphere. Therefore we have got a greater right and a greater liberty to request the legislature to see that as far as possible our traditions and our customs are not interfered with unless it is felt that there is positive need for change. That is the aspect that I wish to emphasise upon. No doubt it was said that in British India a particular state of things existed and they brought legislation to meet their requirements. Who knows the permanency of these legislations? Tomorrow altered circumstances may bring out changes in them. Then, are we going to follow those changes and modifications ? Are we to ape other people in these matters ? The social backgrounds or the legal atmosphere might have given room for these legislrtions in some places. Probably when the authoress of that rubbish nonsense "Mother India" Miss. Mayo wrote that book, immediately someone thought it necessary to bring legislations which they thought would raise India high in the prestige of the world. But tomorrow all these things may disappear. Because there is a legislation in British India, there is no reason why we should adopt it here. If the argument is that there is a legislation there, that there are Brahmins, there also, and therefore there is no harm in bringing it over here also it really surprises me. What we have to examine in considering this is proviso why it should be presumed that the person having charge of a minor negligently failed to prevent the marriage of such minor. No doubt, we are certainly aware of what is called vicarious responsibility. In theory, in every joint family the father is the head ; he has got to do everything there. He is all in all. In Roman law there is what is called the system of group recognition. Are we to recognise that system ? One cannot now a days live without yielding to the wishes of other people. No doubt, if you are going always to break the wishes of others.

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PRESIDENT : The honourable member will confine his remarks to the proviso.

MR. E. SUBRAMONIA AIYAR : I only want to point out that when we are passing this legislation, there is no necessity for this presumption. In a marriage the father and the mother are certainly in charge of the girl. But if you will look at the new fangled notions of young people of the present day, you will realise that you are not justified in presuming that there is any negligence on the part of the father. The age for majority is fixed as 18 in Travancore; in Hindu law it was 16; in the English law it is 21; and in France, it is 24. But these are all arbitrary limits put forward by us. When we make social legislations, we cannot ignore all the new ideas of self determination and all the rest of it that we now find in the minds of young people all the world over. The fourteen points of President Wilson.....

PRESIDENT : Order, Order. The question now is with regard to the negligence of parents whose minor children contract marriages.

MR. E. SUBRAMONIA AIYAR : Sir, everybody expects me, as a lawyer, to be more relevant.

Sir, if it is a question of control of animals, provision can be made that the keeper or owner should be presumed to have been negligents. But certainly, when similar hard rules and standards are enforced against human beings, it will make the responsibility of the parents too hard to bear. When Sri Rama was asked to go to the forest, he meekly submitted to the ruling of Dasaratha. But I would ask, in all seriousness, how many children would now promise such unquestioning obedience. There is the difficulty of keeping them under normal control. Is it then proper to puish the parents on the ground of negligence, for their children's misconduct. Supposing a girl of thirteen runs away. Certaily, I must go in search. Then, I must prove to the Magistrate that I took all care and yet she ran away. In these circumstances, what will be my plight when you punish me for negligence, and also lay it down that I should prove that I was not negligent. If you are going to punish me for negligence at least, as in all cases of negligence prove my negligence, do not presume it. Probably the father may take particular care and at the same time the mother may allow her to escape. Or, it might be that some other persons may help her in escaping. All these things may happen. These are matters inherent in the human nature; and when we legislate we have to bear in mind these facts. This is not a factory legislation. You are legislating for human beings. Unless you pay attention to the deep-rooted instincts of human beings, there is no use in bringing such pieces of legislation. After all these are matters of elementary psychology. Our mind is divided into three compartments as it were; the spiritual, the ego and the super-ego. The ego is very strong. In the case of the old, probably a certain amount of restraint is possible. But the young mind is so strong that lapses very often occur. Every parent will take care that his children do not escape from his custody and contract alliances which according to them are dangerous. But in individual cases, children may do what they like, especially in these days of self determination which the younger generation is fast acquiring. Fashion and

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many allurements of society are attracting both male and female. We cannot shut our eyes to these matters. The child cannot be as dangerous as a lion or a tiger or a bear. Things have not come to that stage. Sir, if there is wicked intention on the part of the parent if he had deliberately intended to break the law, by all means, punish him. Are you so much afraid of the Brahmin community, which pleads that this bill should not come into operation, as to make this violent departure from the fundamental principle of jurisprudence? Do you think that the Brahmins are completely devoid of all sense of obedience to the law? Is the super ego of the Brahmin so strong that he certainly will break the law? Is it reasonable to impose this penality? In life, according to me, every step that you take is a step in the evolution of man.

It is therefore a question of adaptability, as Mr. Sivathanu Pillai put it the other day. But. Sir, even in such adaptability, the intricacy of the human mind cannot be lost sight of: when we deal with human beings, when we legislate for human beings, we cannot deal with one particular aspect alone and ignore the rest. Therefore I suggest, do not push matters too far. If you think a person is negligent, prove that he has been negligent, and then punish him. Do not presume that whenever there has been a marriage, the father, the parents, must have known it. There is no justification for such presumption, especilly in these days.

With these words, I press, for the respectful consideration of the House, the necessity for the deletion of the provisio contained in sub-clause (ii) of clause 6.

MR. JOSEPH VITHAYATHIL: Sir, I support the amendment. It will be realised Sir, that the clause as its stands touches not only the parents of minors but also the wardens of hostels and Principals of Colleges. If a child marriage is contracted by a girl or a boy under the care of the warden of a hostel, or studying in an educational institution, such warden of the hostel or principal or headmaster of the institution as the case may be has to prove that he has not been negligent over the matter and that he did all that was possible to prevent the marriage, although the marriage and the relationship that led to it might have been entirely beyond his contorl, and the warden of the hostel might have been absolutely innocent of the whole affair. I do not see why the burden should be thrown upon him to prove that he has not been negligent over the matter. So far, with regard to the practical working of the provision.

With regard to the principle underlying this provision, it certainly runs counter to the recognised principle of criminal law that the accused will be presumed to be innocent. Even for overt acts done, under the Criminal Law, it is the prosecution that has to prove the guilt of the accused. And, here it is not any overtact that is sought to be punished; it is a mere omission. Under the law, an omission, however immoral it may be, is not ordinarily an offence. If you see a boy drowning in a shallow pond and if you can save him without endangering yourself, it is no offence if you keep quiet and do not

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attempt to save him. If two people murder each other, it is no offence if you do not prevent it when you can do so. Why then, I ask, should omission be penalised in the case of child marriages? And, why should persons who are not parties to the transaction be made to prove that they did all in their power to prevent the marriage?

Further, Sir, in all cases except cases of quasi criminal offences of the nature of municipal bye-law where the law declares a particular act an offence, the law ordinarly insists on a guilty mind behind *i. e. a. mens rea.* before holding that the perpetrator of the act was guilty. In other words, he must not only have committed that physical act but should also have the guilty mind. Even in cases where *mens rea* has not been specifically mentioned in the definition of the offence the trend of the rulings is that the prosecution should prove that there was *mens rea*. Now, according to the clause it is not the case that the accused has committed any act; still the law presumes that he has been guilty; and the burden of proving that he had not been negligent is thrown upon him. He has to prove, in respect of an act committed by others, that he did all in his power to prevent the act. Certainly, that is going too far.

There is absolutely no necessity for a provision like that; and I am in entire agreement with my friend Mr. E. Subramonia Aiyar in suggesting that the sub clause should be deleted.

SRIMATHI T. NARAYANI AMMA: We would like to hear the Legal remembrencer before further discussion of the subject.

PRESIDENT: This is a matter which does not depend upon what you might call the construction of the statute; it is a question of substantive law. You are drawing certain presumptions, and, on the basis of such presumptions, holding certain persons liable. It is for the House to decide whether such presumptions can be drawn or not. Government are not going to intervene and give their opinion on a matter of social legislation of this kind.

But it is certainly open to the Legal Remembrencer to say what he, personally, has to say on the matter.

MR. PUTHUPALLY S. KRISHNA PILLAI: I spoke on the last amendment because that was a case in which a general principle of law was involved, and reference was made to other statutes. But as pointed out by the Chair, this is a question of presumtion provided for in furtherance of the principle of this measure, so that it is a matter entirely for the decision of the House.

I may however mention that there are other statutory provisions in other countries penalising parents for the misconduct of their children.

PRESIDENT: In British India also, there are such statutes.

MR. PUTHUPALLI S. KRISHNA PILLAI: The law of Domestic Relations by Eversly will give any number of instances of such statutory provisions.

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MR. M. G. MATTHEW: Sir, I am entirely at one with Mr. E. Subrahmanya Aiyar. It is better that we leave such matters to the judge. The judge will be the best authority to decide as to whether a parent or guardian has really been guilty of negligence or not.

Sir, the present provision in the Bill seeks to make every innocent man liable for the offences of others. for the mere fact that he holds a particular position with respect to the parties to certain marriages. That is a very undesirable state of affairs. I do not think there is a similar provision in any other statute There is no other statute under which anything short of an overt act constitutes an offence. And, under the Penal Code, even such overt acts which culminate in offences, do not by themselves make the persons responsible for those acts guilty; a guilty mind behind is necessary. But here, not even an act is necessary to make a person guilty; a mere negative state, merely remaining neutral, remaining quiet, is being made an offence. It may happen that, as a matter of fact, a guardian is not in a position to prevent a marriage; the whole thing might have been managed secretly without his knowledge. Even under such circumstances, the parent or guardian is made liable.

And, the worst of it is that he has to let in evidence to prove that he was not negligent and that he did all that was possible. Sir, there are provisions in the Evidence Act regulating the law of presumptions. The present provision violates all those provisions. In penal provisions, certainly the burden of proving guilt should be on the prosecution the burden of proving innocence is not on the accused The fundamental rule in criminal law is that the accused should be afforded all opportunity to escape conviction; hence that provision regarding the burden of proof. Here the attempt is made to make a person liable for an act performed by another; and it is not any overt act that is sought to be penalised, but a mere omission. And, in regard to such omission, we seek to throw the burden of proof on the accused. Certainly, that is opposed to all principles of jurisprudence, against all canons of legislation.

MR. PUTHUPALLI S. KRISHNA PILLAI: Is not the law liable to be evaded by the parents if this proviso is not retained?

MR. M. G. MATTHEW: That was why I suggested, leave it to the judge; he is the best authority to decide on the evidence in each case whether as a matter of fact the law has been evaded by the parent or the guardian. If evidence is let in before a Court that a father or guardian participated in the marriage of a minor, or that, having known that the marriage was taking place, did not prevent it, and if these facts are established, by all means convict him. But, to presume that a person is guilty merely because he sits quiet, or was ill, or did not know of the marriage, is really very hard.

Therefore, it would be better to leave the matter to the judge. With these words, I support the amendment.

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MR. P. S. NILAKANTA AIYAR: Sir, I support the amendment. The question that the House has to consider whether the ordinary law as to burden of proof in criminal cases should not apply in the case of this clause also, or whether, in this case alone, the guilt of the accused should be presumed. Sir, it is an elementary rule of law that, in criminal statutes, no one shall be deemed to be guilty until it is proved; until the contrary is proved, innocence is always presumed.

MR. M. SIVATHANU PILLAI: May I know the procedure in the case of confessions or admissions of an accused in a criminal case?

MR. P. S. NILAKANTA AIYAR: That is on an entirely different footing; when the accused admits his guilt, where is the harm in presuming he is guilty? That is not the case here. Here, it is the Legislature that intervenes and says that, in this case alone, even when the accused does not confess or admit his guilt, he shall be presumed to be guilty. That, I say, is against the fundamental rule of criminal jurisprudence. You say "If you do not prove that you were not negligent, we will presume that you were negligent."; from the mere fact of the marriage having taken place, you want to presume that the parent was negligent. That is highly unjust, and opposed to the fundamental principal of criminal law.

Then, Sir, let us scrutinise the wording of the provision. If you read sub-clause (2) of the proviso, it would appear that only one person is contemplated as the person in charge of a minor. On the other hand, if you read sub-clause (1) of the proviso, it is clear that there may be more persons than one in charge of a minor; and that point was made clear also during the debate on the previous amendment. If that be so, I ask whether the father, uncle, or even the warden of the hostel in which the minor lives, could all be deemed to be in charge of the minor and therefore guilty with the help of this presumption.

We cannot close our eyes to the present day conditions when liberty of action is given to girls. If they say that they want to be married at a particular age, have the parents any control over them? Mr. E. Subramonia Aiyar has said that in very many instances the parents of the minors may not have been to blame at all. The girl may have been seeking a husband of her own, even against the express of the guardian or parent or other person in charge of the miner. In such cases, I ask, is the law to presume that the parent or guardian or other person in charge of the minor was negligent in the matter. I will go a step further and ask why should this presumption arise in this particular case alone. It seems to me that the party who says that there is necessity for drawing such a presumption must allege that unless the presumption is drawn there is great difficulty in the working of the Bill. The mere fact that such a provision exists in the Sarada Act need not at all deter us. Are we to copy all the provisions in that act without considering what the advantages and disadvantages of those provisions are, especially when that act itself has not been actively put into force except in a very few provinces in British India and even there

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when practical difficulties have been met within the working of that act. It is up to us to examine and see whether there are defects in the Section and whether it will work hardship to both the sides. It seems to me, Sir, that this Section goes a great way against the guardians. It will be legislating with a vengeance to introduce inovations contrary to all accepted notions of the law of evidence and jurisprudence to make presumptions and then ask the defence prove want of negligence in the first instance. As the clause now stands all that the prosecution has to do is, after proving the marriage, to call upon the accused to prove his case, if any. Then it is for the defence to adduce evidence to prove the absence of negligence. I will not support such a piece of legislation. I therefore support the amendment.

MR. M. SIVATHANU PILLAI: Sir, I oppose the amendment. In doing so I am rather afraid to join issue with my honourable friend, Mr. E. Subramonia Aiyar, on the question of law, and the implications of law. He may at this juncture be inclined to think that I am dabbling in points of law as well. All the same I may put it straight to him whether this case is analogous to the case of an accused under the Penal Code. Sir, I always think that if there be any good done to India as a whole by the British it is the principle underlying criminology in British India, the same is true in the case of Indian States also namely, the principle that all accuseds should be presumed to be innocent until their guilt is proved by the prosecution. I should think that that is more important than what has been referred to here as *mens rea*. I should think, Sir, that in all cases of criminal offences, the accuseds should be presumed to be innocent. That is one of the very few boons of the British rule in India. But Sir, that should not be compared with the case of a parent or guardian having domain or custody of a minor boy or girl. It is the natural presumption - and there is no other presumption possible—that the father, mother or other guardian has got control over the minor boy or girl over. If by some circumstances over which he or his wife may not have control, the boy or girl escapes from the custody of the parents, my friend Mr. Subramonia Aiyar says, why should the poor father or the poor mother be held responsible for the commissions of the frantic boy or girl? (*At this stage the President left the Hall and the Deputy President took the Chair.*) I quite appreciate the position. But what does he say with regard to the natural presumption that the father is responsible so long as the boy or the girl is under his custody? The Section as is found in the Bill contemplates only a case of that sort. If that Section is omitted, what is the natural consequence? The father and the mother can allow the girl to get married, or, for the matter of that, can even connive at the escape of a boy or a girl to get married in some other place, and will say "I am not able to control my boy although he is aged only 12 or 13 years? he is not amenable to my control." My friend Mr. E. Subramonia Aiyar would turn round and say "I can look after my boy only in my own house. Pretending to go to school, he went to Thangacheri and got himself married." But will

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[Mr. M. Sivathanu Pillai.]

it not be for the courts to see whether there is any truth in the statment of Mr. E. Subramonia Aiyar? If as a matter of fact he is found to have been absolutely helpless in the matter, the court can easily understand his situation and allow him to escape from the clutches of the law. All that the clause speaks of is the negligent failure on the part of the parent or guardian, or other person in charge of a minor. I lay stress on the words "negligently fails". For example, a boy escapes from the custody of his father. He wants to go and marry a girl. The father sees him. My friend Mr. E. Subramonia Aiyar may argue that if it were a case of his son he cannot run as quickly as his son. All the same he must take all the necessary care to see whether he cannot prevent his son from such a marriage.

MR. E. SUBRAMONIA AIYAR: Will the law permit Mr. E. Subramonia Aiyar if such a contingency occurs which God forbid!—to lock up his son?

MR. M. SIVATHANU PILLAI: Certainly not. If such a boy escapes from the custody of his father and gets himself married, the clause only presumes that there is some negligence on the part of the father. It does not presume guilt. Towards the end of the clause it is said "*having charge of such minor has negligently failed to prevent.*" That is the position. In another instance a boy goes away from his house and is about to marry a girl and such of the persons as are able to prevent the marriage from taking place approach the father and tell him that if he pays them Rs. 1,000 they will prevent it If Mr. E. Subramonia Aiyar, if it were a case of his boy, is not able to pay the amount and it is found by the court that he is unable to pay the amount, certainly the court will be on his side.

MR. E. SUBRAMONIA AIYAR: Is it the honourable member's suggestion that the practice of blackmailing may be permitted against people who are unable to see that their children do not get themselves married without their knowledge?

MR. M. SIVATHANU PILLAI: I do not want to encourage blackmailing. The parent, if he is able, must take all steps to prevent the marriage from taking place. For example, he must get a motor car and with all expedition remove the boy and prevent him from marrying. The law provides and permits that the son may be bodily and forcibly brought again to the custody of the parent. Why should Mr. E. Subramonia Aiyar not do it? He has got a big car. If he does not do it, the natural presumption is that he is also conniving at it.

MR. K. R RAMASUBBA SASTRI: What about people who have no cars of their own?

MR. M. SIVATHANU PILLAI: They may as well seek my help.

MR. T. C. KESAVA PILLAI: Is Mr. Sivathanu Pillai mortal or immortal? The Laws that we are enacting should not be dependent upon particular individuals.

MR. M. SIVATHANU PILLAI: Sir, it is an immortal question and it will be remembered by all the members of the House.

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Here is a minor boy or a girl who is expected to be protected and kept under the custody of the father and mother. That boy escapes from the custody of his parents and gets married. Under this clause, it is presumed that the father was rather negligent; but if it is proved to the court that the father could not know it, he being away at Madras for a pretty long time before the marriage, certainly the court will not hold the father responsible. My friend Mr. Joseph Vithayathil mentioned about wardens of hostels being made liable under the clause. In such cases they need only place the facts before the court stating that they had no interest in advancing such an alliance. It all depends upon the integrity of such warden. If he makes a trade of this business he deserves to be punished.

MR. E. SUBRAMONIA AIYAR: May I draw the attention of the honourable member to the words *"it shall be presumed"* occurring in the clause?

MR. M. SIVATHANU PILLAI: The presumption of course arise only if it is not rebutted. The evidence to rebut it may partake of the nature of a series of witnesses, or it may be a mere statement before the court. It will depend upon the circumstances and the persons concerned. It will depend upon the circumstances and the persons concerned. If we take this sub-clause away, what is the purpose of this legislation? I can allow my son to get away and get himself married even though he is a minor, because minors cannot be punished; because it cannot be easily proved that I was negligent over the matter. Sir, I believe that this amendment is the thin end of the wedge. It is a clever device, perhaps, of Mr. E. Subramonia Aiyar. If this sub-clause is taken away, the Bill is not even worth the paper on which it is printed.

MR. K. T. THOMAS: Sir, I support the amendment before the House. This Bill would show that the sanction behind this legislation is trial by a court of criminal jurisdiction ending in either acquittal or conviction, and, if in conviction, by a fine or imprisonment or both as the case may be. Therefore when dealing with this question, the necessity or otherwise, the desirability or otherwise of the intention of the sub-clause (ii) of this clause, we should properly advert to the circumstance that it is after all a criminal trial that is contemplated by the legislative enactment. In ordinary criminal cases, it is known that the burden of proving facts necessary for leading to conviction rests entirely with the prosecution. I for one fail to note the reason why the onus of proof that is commonly accepted in criminal cases to rest on the prosecution, should be shifted on to the accused.

MR. M. SIVATHANU PILLAI: Is not breach of provisions in social legislation actionable under criminal laws.

MR. K. T. THOMAS: That is the very reason why I say that the sanction behind a social legislation is a criminal trial ending in a conviction or acquittal as the case may be. The court competent to deal with such cases is a Magistrate Court. Ordinarily, in the case of a trial by a Magistrate, provisions of the Criminal Procedure Code and the evidence Act are to apply.

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MR. M. SIVATHANU PILLAI: Is it not with reference to the moral turpitude involved that the ordinary criminal law is to be made applicable?

MR. K. T. THOMAS: I am not concerned with the question of moral turpitude at all.

MR. M. SIVATHANU PILLAI: May I know, is punishment to be meted out under a special law or ordinary law?

MR. K. T. THOMAS: The one question that arises is whether it is a criminal trial that is contemplated. I think this is a case of that category and the question of moral turpitude attaching to a conviction is not involved therein.

MR. M. SIVATHANU PILLAI: Could not the trial be done by the Munsiff?

MR. K. T. THOMAS: I am only concerned at the moment whether this is a criminal trial or not, I am not here to answer the question of moral turpitude or of the designation of the judicial officer who may try the case. It is widely known that in a conviction for a political offence, the question of moral turpitude will not arise. But all the same, it is a criminal trial. It is a punishment. Therefore the question whether moral turpitude would be attached to a conviction or not ought not to be a guide in determining the form of the trial or the law relating to the procedure in regard to that form.

MR. E. SUBRAMONIA AIYAR: Is not this Bill a part of anti-social act?

MR. K. T. THOMAS: Yes. It is conceded that an anti-social act which is an offence—and I would go further and say—in so far as it is deemed to be anti-social by legislature, it is an offence; and if it is an offence, it should necessarily adopt itself to all the forms of trial provided by a criminal court. So, there could only be a trial conducted by a criminal court. Therefore my position is that in so far as we find that an offence against this enactment is a proper subject of trial in a court of criminal jurisdiction, such a court is necessarily to be guided by the rules of procedure under the Criminal law and the Evidence Act. I do not find any case could be made out for a departure from the ordinary known canons of criminal jurisprudence, *viz.*, that it shall always be the duty of the prosecution to prove all the facts necessary so as to lead to a conviction. In criminal jurisprudence, if there is anything fundamental it is that the accused is presumed to be innocent, until the contrary is proved. I do not find any reason that actuates me in saying that there is necessity for departing from this ordinary, accepted, commonly known fundamental of Criminal Jurisprudence. It was pointed out by my predecessor who talked on this subject that the attempt to defeat the purpose of this section was really an attempt to abuse the enactment into a 'nullity'. In legal language, that expression does not mean anything. It may be said that an amendment might lead to the result of making an enactment an absurd one. It does not, nevertheless, make the enactment a nullity. The enactment *is* there. There is no question of nullity at all. It may be said that a deletion

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of a part of the section would make an enactment absurd. But all the same, it *is* there. According to me, there is absolutely, no room or warrant for the position that by a deletion of a portion of this clause, it will become an absurd enactment for this reason. If the onus of proof is cast on either the accused or on the prosecution, I fail to see how, by that circumstance, an enactment would become absurd. The only question is whether consistent with other provisions of law which relate to criminal trials and convictions under criminal law, this measure also should not come within the ambit of those provisions which cast the onus of proof on the accused.

MR. M. SIVATHANU PILLAI: Is there not an indentical provision in the British Indian enactment? Was that law passed in ignorance of the arguments now advanced by my learned friend?

MR. K. T. THOMAS: Whether they were ignorant or otherwise, I am not competent to answer. I am prepared to concede that there is an identical, parallel provision in the British Indian Act. That is no way, according to me, compels me to enact the very same provision here. If I am convinced as to the necessity of a provision, in spite of the fact that the British Indian Legislature has not enacted it I will plead for it; that will not stand in my way.

MR. M. SIVATHANU PILLAI: Are not the circumstances the same, both here and elsewhere?

MR. K. T. THOMAS: They may, or may not be.

According to me, it makes no difference; because, I concede for a moment that all these contingencies were contemplated by the British Indian Legislature when they enacted their Act. But, as I said, the fact that they enacted a similar provision in their enactment is no reason, according to me, to compel us here to lay down an enactment on parallel lines.

As far as the question of parallel legislation is concerned, I have a word to offer. If at every stage we are to be led by what British India has done, we cannot proceed at all. It is not possible, now or at any time, that we follow them even in their words and phrases. We need not be told that British India has done this and that; it is up to us to enact laws according to our requirements. There is no good copying British Indian law on all matters. If that is raised as an argument, then we are really becoming an absurd body. After all, are we to consider enactments on their own merits, or, are we to be swayed, at every stage, by British Indian law?

MR. M. SIVATHANU PILLAI: In case of differences of opinion as at present, which is the authority that is to weigh with us?

MR. K. T. THOMAS: We, lawyers, draw a distinction so far as authorities abroad, an enactments abroad, are concerned. It is possible that the High Court of Travancore may take a position which is inconsistent with that accepted by the High Court of Madras; and when such a position is taken, I do, in deference, bow to the Rulings of our Honourable High Court. It may be absurd in the light of the

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[Mr. K. T. Thomas.]

British Indian decision. But all the same it is law in Travancore. In matters pertaining to legislation, I am not concerned with the existence or otherwise of authorities elsewhere on the subject.

MR. PUTHUPALLI S. KRISHNA PILLAI: In the absence of our own authority, what is the method which my honourable friend would suggest?

MR. K. T. THOMAS: Our honourable the High Court decide case in all equity and justice.

MR. PUTHUPALLI S. KRISHNA PILLAI: For that purpose, do they rely on cases decided elsewhere?

MR. K. T. THOMAS: They may or may not. But, always they decide keeping in view the justice of the cause involved. In the absence of authorities in Travancore, our honourable the High Court have decided cases in accordance with the principles of equity, justice and good conscience.

MR. JOSEPH VITHAYATAIL: What about the burden or proof?

MR. K. T. THOMAS: Yes. My position is that, in spite of the circumstance that a similar provision exists in the British Indian enactment, in spite of the provision in British India casting the burden of proving the innocence, I am for deleting this provision, because, it is inconsistent with the common, accepted, recognised principles of criminal jurisprudence.

MR. T. C. KESAVA PILLAI: മി: ഇ. സുബ്രഹ്മണ്യയ്യർ അവതരിപ്പിച്ചിട്ടുള്ള ഈ ഭേദഗതിയെ ഞാൻ പിൻതാങ്ങുന്നു. തിരുവിതാംകൂറിലെ അബ്കാരി റഗുലേഷൻ അനുസരിച്ച് തൊണ്ടിസാമാനങ്ങൾ എടുത്തു കൊണ്ടു പോകുന്ന ആളിനെ കുറക്കാരനാണെന്നു സ്ഥാപിക്കുകയും തെളിവെടുത്തുകഴിഞ്ഞാലും ചിലപ്പോൾ പ്രതി കുറക്കാരൻ ആകുന്നു. ബ്രിട്ടീഷ് ഇൻഡ്യയിൽ ആരുടെയെങ്കിലും പുരയിടത്തിൽ അയൽപുരയിടങ്ങളെ ഉപദ്രവിക്കുന്ന വണ്ടുകൾ, പക്ഷികൾ മുതലായവയെ വരുന്നപക്ഷം കുറകരമാക്കുന്ന ഒരു നിയമമുണ്ട് (Pest. Act.) ഇതുപോലെയുള്ള ഒരു നിയമമായി വരികയില്ലയൊ ഇതും, എന്നു ഞാൻ വിചാരിച്ചുപോയി. പ്രതി പ്രഥമദൃഷ്ടിയിൽ കുറക്കാരനാണെന്ന ആരോപണത്തോടുകൂടിയ ഒരു ചട്ടം ഇത്തരത്തിൽ ഉള്ള ഒരു ബില്ലിൽ ഘടിപ്പിക്കേണ്ട ആവശ്യം ഉണ്ടെന്നു തോന്നുന്നില്ല. അതിനാൽ ഈ പ്രൊവൈസൊ ആവശ്യമുള്ളതല്ല. അതു എടുത്തുകളയണമെന്നുള്ള ഭേദഗതിയെ ഞാൻ അനുകൂലിക്കുന്നു.

MR. N. RAMAKRISHNA PILLAI: Here is another instance of a curious measure opposed to the principles of all legislation. In a case of criminal offence it is provided that a presumption should be drawn against the accused in case of negligence or failure to prevent an offence. I do not

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know why such a provision should be introduced in a legislation of this character. In the first place it has already been indicated that child marriage is an offence as in the case of every other offence. But law can very well take its own course and prove that there has been negligence in respect of such persons. Why should a provision be introduced presuming that the parent is guilty? I fail to understand why such a provision, directly opposed to all fundamental notions of law, should be introduced in a legislative measure of this character. The act of marriage has not been made unlawful by this measure. I submit that if a parent is to be penalised for not preventing a marriage of a child, the same reason can very well be applied for a parent for not preventing a child from committing any other crime. Suppose for instance a child commits a crime under the Penal Code. Is the parent called upon to answer for that crime? Is the parent in any way penalised for not preventing that child from committing that crime?

I do not know why, when in respect of every other the crime the parent is not considered guilty, he should be presumed to be guilty in this particular instance alone, *viz.*, the marriage of his a minor child. There is no reason why such an extraordinary provision should be introduced in the present case. Apart from that, I may also draw the attention of the House to the fact that there are cases of criminal negligence under the Penal Code. Even there the Court is not entitled to presume that the accused is guilty of negligence. There is no reason why there should be any such presumption in the case of a marriage of a child alone. The Indian Legislature has somehow thought it fit to leave the provision like that. I do not think they passed it after due consideration of all aspects of the question. I therefore support the amendment and would request the House to consider whether we would be justified in passing an extraordinary measure of this kind.

SRIMATI T. NARAYANI AMMA: I oppose this amendment. I endorse the views expressed by the Government member.

MR. T. M. VARGHESE: Mr. E. Subramonia Iyer, in presenting the position with sufficient clearness has accounted to show the parents' impossibility to escape punishment if this proviso finds a place in the bill. He has, no doubt, pointed out the impossibility by retaining the provision in the bill by saying that a presumption of the kind that is sought to be enforced makes it rather difficult for any parent, mother, father or guardian, to escape the liability. There is considerable force in saying that a parent (father or mother) or other guardian in charge of a minor, a boy of 17, should not be made liable if the boy commits murder. But certainly, there should be some presumption against the parents if the boy goes out of hand and gets married. I think there is considerable force in that argument. On the other hand if this provision does not find a place in the Bill, the other provisions in the Bill will practically become nullified.

MR. K. R. RAMASUBBA SASTRI: Is the member supporting or opposing the amendment?

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MR. T. M. VARGHESE: After the statement that I have already made, giving sufficient indication to the member, if he has not understood my position I would request him to wait patiently for a minute more. Certainly, it cannot be the intention of the legislature that the other provisions of the Bill should become meaningless or ineffective. There is considerable difference between the crimes provided for in the Penal Code, and the present provision in the bill. There is no presumption that any offence committed by a person is committed in conjunction with any other. Every person that commits an offence is pri-marily liable. According to the system of marriage in our land, practically in all the communities of the land, marriages, particularly of minors are conducted by their parents or by the persons in charge of the minors. The legislature should not forget that. The duty of marriage of a minor is ordinarily cast upon the parents, and therefore derelictions in regard to the conduct of marriages are also naturally cast upon the parents. That is not so with regard to other offences; there is no law which provides or any practice which would justify our casting any liability on any other person than the doer of the act. Therefore, I submit that the comparison of the present provision with provisions relating to other offences does not arise. Unless it is provided that the parent has been negligent in the matter of allowing his minor child to get married; the marriages of minors would be freely conducted and the parents will always got free by pleading that they had nothing to do with the marriage. If this proviso does not find a place in the Bill, marriages of minors would hereafter be celebrated in some place other than the parents' residence.

MR. JOSEPH VITHAYATHIL: Should not the burden of proof lie on the prosecution?

MR. T. M. VARGHESE: I do not want to correct the general law of presumptions now. But when we are legislating on a matter like this, we should not render the other provisions of the Bill a nullity. With open eyes, we shall not accept a state of affairs whereby the Bill, as a whole will be rendered ineffective. It is therefore that I suggest that this proviso should be retained so that the Bill generally may not be rendered ineffective.

MR. N. RAMAKRISHNA PILLAI: Is not the neglect, to prevent a marriage, itself made an offence?

MR. T. M. VARGHESE: It is therefore clear that it is open to the Legislature to throw the presumption either way. Even the neglect to prevent a boy from drowning is not an offence. I can neglect to prevent a boy from drowning, neglect to render him the necessary help to prevent him from drowning; it may be immoral; nevertheless, it is not an offence. But if, on the other hand, I do not prevent the marriage of a boy of 17 in my charge it is declared an offence. That is what the present seeks to provide that is the importance that is assigned to child marriage. Here is a matter in which mere neglect is declared an offence. Therefore, I would certainly suggest that it is absolutely necessary that this proviso should be retained to serve the purpose intended by this bill.

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MR. KOTTALIL P. ABRAHAM: May I know how the deletion of this proviso would defeat the purpose of this clause?

MR. T. M. VARGHESE: If there is no objection to a person allowing his ward or his minor child to get married, I would have no objection in deleting this proviso. But this Bill wants to make it an offence. And after all, it is not very difficult for the parent or guardian to prove that he was not negligent. Registered letters written by the minor will prove that he was going to marry in spite of his father or guardian. The only thing is that the burden of proof is cast more heavily on the parent to show that he has adopted all possible methods to prevent the marriage from taking place. If a parent wants to escape liability, certainly, it is his duty to adduce convincing proof that he had done all in his power to prevent the marriage. We are here legislating for the prevention of a child from doing what we consider an evil act. So, to cast a certain amount of liability on the parent is not too much. If boys and girls are to be allowed by their parents to get themselves married whenever they like and whomsoever they like, there is absolutely nothing irregular in casting a certain amount of liability on the parents so that they might exercise all possible control to prevent such derelictions of duty on the part of the boy or girl. Otherwise this bill would become ineffective, and ever so many men would try to evade the law by allowing their children to get away from their homes and get married; and then the parents would plead that the marriage was conducted in spite of themsetves and that they were not a party to it. By creating such loopholes the provisions of the Bill would be made ineffective. I would therefore submit that there is absolutely nothing wrong in the proviso. The parents are not going to be made liable. We have not come to such a pass as to make us tremble with anxiety and fear on account of the conduct of our boys and girls. If and when we find that our boys and girls have come to such a stage that it is impossible for us to hold them in check, then it will be time enough for the legislature to intervene and take off altogether the liability now imposed on the parent. Till then it is the duty of the parent to prevent such early marriages and to act up to the provisions of Bill to the very letter.

MR. K. T. THOMAS: Is it not negligence on the part of the parent, if he allows his minor son to get himself married in spite of his father?

MR. T. M. VARGHESE: That is exactly my point. Here, the father, the boy and the mother may conspire for the purpose of defeating the prosecution. The boy who marries the girl to be married, the mother, the father and all concerned, may conspire together for the purpose of making it appear that the marriage was conducted in spite of the parents. For a stranger who puts in a complaint it will be very difficult to prove the negligence of the parent; on other hand, it is easy for the father and the mother to adduce sufficient proof to show that, in the case of a particular boy, he had been misbehaving at home and at school and was having his own ways as could be testified to by the neighbours, his school teachers and others. Those items of proof are in the control of

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[Mr. T. M. Varghese.]

the parent. If on the other hand the burden of proof is cast on a stranger, it would be very difficult, almost impossible for him to attempt to prove the father's negligence, certainly, it is possible for the parent to exercise sufficient control over his minor children; and the parent can certainly prove his innocence and escape liability. If a boy gets away and marries this Bill casts a liability cast on the parent. That is why I say that there should be the presumption also cast against the father, especially because all the means to prove that he is not liable are within his reach. It is not possible for a stranger to prove that the father did not exercise sufficient control. That is negative proof, and is always difficult to adduce. On the other hand positive proof is easy to produce. It is not difficult for the father to prove that the boy ran away in spite of the best attention bestowed by the father. On the other hand, if I am called upon to adduce negative proof that the father kept quite and did nothing to prevent his son's marriage, I submit very difficult. That would be an incongruity. No doubt Mr. E. Subramoni Aiyar, as a lawyer, has, with sufficient clearness and thoroughness characteristic of him, put forth his view on the matter. But, if this proviso is deleted, this bill may become uselees so far as its purpose is concerned.

MR. KOTTALIL P. ABRAHAM: Suppose there is doubt with regard to the age of the contracting parties. In that case will not this presumption work hardship on the parent?

MR. T. M. VARGHESE: Mr. Abraham's difficulty is absolutely clear. I may say that in regard to the question of age, the presumption should be against the parent. Because he is the best person who has got the greatest convenience to prove the age? Who has got the facility to prove the age of the boy? Certainly, it is the father. If any evidence is necessary to establish the age of the bride or the bridegroom, it is always possible for the parents to prove the age of their child. They can easily prove whether the boy is 18, 19 or 21. If, on the other hand a stranger were asked to prove the age of the boy, to prove that he is really a minor, certainly it would be impossible for him to prove it. The boy is *de facto*, not *de jure*, under the control of the father. That would certainly lead us to the irresistable conclusion that the parent can very well prove that, in spite of his care bestowed on the boy, he got out of control and contracted the marriage. It is possible for him to prove that and it is not possible for any other person to prove that. I would, therefore, suggest that there is absolute necessity for retaining this provise.

MR. JOSEPH VITHAYATHIL: Sir, as the Clause stands it is as ollows:

> "For the purpose of this Section, it shall be presumed, unless and until the contrary is proved, that, where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised."

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Does the question of age arise here?

MR. T. M. VARGHESE: I thought that it was an intelligent question which Mr. Abraham put. Therefore, I answered that, and I spent a precious part of my time to answer that. In all the sections of this Bill, the honourable members will find that the term minor comes. The question that the alleged minor is not a minor is of paramount importance. If the bridegroom is proved to be not a minor, the whole prosecution would go.

MR. N. RAMAKRISHNA PILLAI: How is the proof of negligence in this case different from other cases of negligence?

MR. T. M. VARGHESE: Sir, this is a matter in which, according to the legislature one man does a particular thing and another man is made liable for that. I thought I made myself sufficiently clear. In this case a particular person is doing a particular act and another person is made liable for that. If the House is not agreeable to that, the question may be dropped. But as it is, we *are* making a person liable for the acts of another. Therefore, in this case the ordinary rule of presumption should not apply. We have given a man a vicarious responsibility for the act done by a totally different person. That being so, the rules adopted here must fundamentally vary from the ordinary rules regarding presumption.

MR. N. RAMAKRISHRA PILLAI: Is it to prevent the evasion of law that the proviso is made?

MR. T. M. VARGHESE. Not only in this, but on any matter, we should always have in view the chances of evasion and should make provisions to prevent evasion. These and other provisions are intended to prevent the commission of an act which is the object of this measure to prevent.

MR. N. RAMAKRISHNA PILLAI: May I know whether all these provisions are made for the purpose of preventing evasion?

MR. T. M. VARGHESE: There can be no such thing as mere evasion by itself, in this matter. Here, evading means doing something. Here, evading means the contracting of child marriage. All these provisions are to prevent that.

MR. JOSEPH VITHAYATHIL: Mr. Varghese was explaining that, under this Bill, a person is made liable not for his acts but for the acts of others.

DEPUTY PRESIDENT: Order, order. The honourable member is not entitled to make a speech.

MR. JOSEPH VITHAYATHIL: Sir, he said that we have made a deviation, and therefore the rule as to presumptions should also be different. If a person is made liable for the acts of another, then why should there be presumptions also against him.

DEPUTY PRESIDENT: The honourable member is out of order.

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MR. E. P. VARGHESE : I wish to say a few words in support of this amendment. It must be said that as regards this clause, the ordinary principles of criminal jurisprudence have been deviated from. But when we deviate we should deviate as little as possible, and not change it root and branch. The previous speakers have pointed out that in this case the burden of proof should be on the accused, instead of on the prosecution as in ordinary criminal cases. The argument is that it would be easy for the parent to prove that he was not negligent rather than for the prosecution to establish that the parent was negligent. The proviso now in question provides what "negligently fails" means, and how it is to be proved and by whom. There it is that *we* take objection. It deviates from the general principles of the law of evidence in criminal cases. It is said that "*for the purpose of this section, it shall be presumed that he is.*" So, there is no escape from that, and the burden of proof is on the parent. Sir, this is violent departure from an accepted principles of criminal jurisprudence. If the parents and the relations conspire, send the minor over to the uncle, and then say that the child was not under the control of the parent, even then there is provision for punishment under Section I. It makes guardian liable. In all cases, the prosecution has to establish the guilt of the accused. I think, especially in a piece of social legislation where one person is sought to be punished for the acts of another, we should not deviate from the ordinary principles or criminal law and put the burden of proof on the accused instead of on the prosecution which wants to prove the guilt.

MR. A. THANU PILLAI : Does not the member concede that it is the duty of the parent or other members in charge of the minor to see to the interests of the minor ?

MR. E. P. VARUGHESE : Yes. But, suppose a minor escapes and contracts a marriage Why should the burden of proof be shifted to the parent.

MR. N. RAMAKRISHNA PILLAI: May I know whether the parent is considered in law a guarantor for the good conduct of the child ?

MR. E. P. VARGHESE : Not always.

MR. A. THANU PILLAI : Then, who else is considered to be the guarantor ?

MR. E. P. VARUGHESE : I say, he is not the guarantor. Suppose a boy of 14 commits murder. Will the parent be responsible ? You cannot haul the parent for criminal liability,

Sir, this question has been discussed at length. The House is quite aware of the various ramifications of the law of negligence and vicarious responsibility.

MR. A. THANU PILLAI : According to the honourable member, whom does he ordinarily expect to be complainants in cases of this kind.

MR. E. P. VARGHESE: Well, I cannot say. But, as I said in all criminal cases, the burden of proving the guilt of the accused is on the prosecution.

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MR. A. THANU PILLAI : But in ordinary criminal cases, the State, takes up the responsibility of burden of proof of the guilt of the accused in the general interes s of the public.

MR. E. P. VARGHESE : Any way, the duty of proving the guilt is on the prosecution.

MR. N. RAMAKRISHNA PILLAI : Is anybody bound to complain under the present Bill?

MR. E. P. VARGHESE : No.

MR. A. THANU PILLAI : If the burden of proof is placed on the prosecution, does the honourable member think there would be people coming forward with complaints under Bill?

MR. E. P. VARGHESE : Why not? If anybody has real interests of society at heart, he would surely come forward.

MR. M. SIVATHANU PILLAI : Does the member want analogies to mislead him?

MR. E. P. VARHGESE : But these are all questions which have been fully discussed here they do not require reiteration.

With these words, I support the amendment.

MR. K. R. RAMASUBBA SASTRI : Sir, my sincere prayer to God, after listening to this debate, is "May I be saved from being born as Tamil Brahmin, in the State of Travancore, at least in my next *janma*." (*Laughter.*)

MR. M. SIVATHANU PILLAI : Sir, is the member in order in making his prayers so loudly? (*Laughter.*)

MR. K. R. RAMASUBBA SASTRI : I have suffered enough punishment, Sir, for having been born a Tamil Brahmin.

MR. KOTTALIL P. ABRAHAM : May I know how the fact of the member being a Tamil Brahmin arises now when we are at a question of presumptions under this Bill?

MR K. R. RAMASUBBA SASTRI I do do not really see, Sir, why this Bill has been brought before this House. Nobody wanted it.

DEPUTY PRESIDENT : You may speak on the present amendment.

MR. K. R. RA ASUBBA SASTRI. I crave the indulgence of the Chair, because, while considering this amendment, there are various other matters which have to be borne in mind. I submit, I am labouring under very great difficulties. Sir, when the Bill was introduced, the views of the Tamil Brahmin were not heard; and he was told that everything could be done at the Select Committee. There also he was not heard. Here, when I prayed that the Bill should not be proceeded with further, the House said that everything was a foregone conclusion and that I had no voice since the principle of the Bill had been accepted by the House. And now, Sir, I am being throttled; I am not allowed to have my say.

Sir, it has been asked whether this bill would not cease to be effective if the Brahmin community were exempted or if the present proviso was deleted This unfortunate bill is being foisted upon us against our will; let it be a dead-letter for aught I care, let it be a still-born child. Nobody wanted this.

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[Dr. K. R. Ramasubba Sastri.]

Sir, even in regard to the very simple principle of English jurisprudence, *viz.*, that every man shall be presumed to be innocent till he is proved to be guilty, it is now stated that the Tamil Brahmin shall be presumed to be guilty. This is the first instance in the history of world's jurisprudence where *mens rea* is presumed. Sir why should guilt be presumed against the Tamil Brahmin simply because he happened to beget unwanted daughters? I am sure honourable members are aware that, when a daughter is born to a Brahmin parent, he invariably has a look of mourning. He considers it a pest ; and if one happens to get 2 or 3, he is done for. There is the Tamil saying that even a king would become a beggar, if he begets 5 daughters. All that is because of the extreme difficulty in getting Brahmin girls married. That is the reason, Sir, why we prayed that no manner of restriction should be imposed so far as the marriages of Tamil Brahmin girls are concerned. Still, that was not allowed ; and now I am being throttled and not even allowed to have my say.

After all, Sir, this is only a piece of social legislation. Why should there be any compulsion in it? Why should anybody else be anxious whether I marry my daughter in her 8th year or 18th year, or whether she elopes with somebody? As I said, nobody listened to me when I said that I do not want this Bill. Now, it is my turn to say that I do not care whether this Bill becomes ineffective or not ; at any rate, so far as I am concerned, let it be ineffective. In British India also, the Bill was rushed through ; but I hear that a secret circular has been issued there to the effect that no prosecutions need be conducted in regard to marriage of girls above 10 years of age.

MR. M. SIVATHANU PILLAI Question,

MR. K. R. RAMASUBBA SASTRI: I only said 'secret circular' ; and secret circulars do not see the light of day (*Laughter.*) ; my friend could not know of that circular ; and it is not possible for me also to prove that, and so I shall leave it there.

There is also one fundamental difference between British India and Travancore in regard to this enactment. In British India, especially in the north and they form the majority, there are only two communities, for practical purposes, *viz.*, the Hindus and the Muslims ; they do not differentiate between Brahmins and other Hindus. On the other hand, here, we have the Brahmins, the non-Brahmins and the Muslims. In british India, the Muslims alone opposed it, and all the Hindus kept quite since the Brahmins are not differentiated there from non-Brahmins ; and they were also assured that the Bill was intended only against atrocious child marriages.

DEPUTY PRESIDENT: The member need not deal with the general principle of the Bill now.

MR. K. R. RAMASUBBA SASTRI : I am just saying why I oppose the Bill.

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DEPUTY PRESIDENT : You are not entitled to oppose the Bill at this stage.

MR. K. R. RAMASUBBA SASTRI : I do not oppose the Bill ; I only say, let the Bill be ineffective so far as my community is concerned. Let it apply to all other communities except mine. The Bill was passed in the Indian Assembly because there were only 2 communities there, *viz.*, the Hindus and the Muslims ; but here we have 3 communities, *viz.*, the Brahmins, the non-Brahmins and the Mahomedans. I do not see why the Legislature should be so unfair to the Brahmin parent and deny him the right which is allowed to all human beings under all systems of jurisprudence.

MR. K. T. THOMAS : Is it the honourable member's view that this proviso will apply only to the Brahmins ?

MR. K. R. RAMASUBBA SASTRI : I am concerned only with my own community ; I do not want the proviso to apply to me. I do not care whether it applies to others or not. It is certainly difficult for me to plead for all, especially when I am myself in hot waters. Let me first save myself, and then I shall try to help others. (*Laughter.*)

(*At this stage, the President took the Chair, and the Deputy President resumed his seat among the members.*)

Sir, as has been already pointed out the ordinarily rule of law is that every one shall be presumed to be innocent ; the act complained of and the *mens rea* should be proved by the prosecutor, the complainant. That is why I submit that, in this Bill also, this abnoxious provision which violates that well-established rule of law should be deleted.

Some of my friends were arguing that the judges may be relied upon to do justice. But, Sir, such friends do not seem to realise the very great difficulties that parties are put to in courts. It often takes years before you are told whether you are guilty or innocent. From the point of view of the accused, it is better to be convicted soon than being honoured with an acquital 2 or 3 years hence. And, often, fat fees have to be paid to the vakils almost on all the days for which the case happens to be posted.

MR. T. C. KESAVA PILLAI : അങ്ങു ജഡ്ജിആയിരുന്നപ്പോൾ ഇതെല്ലാം ഓർമ്മയുണ്ടായിരുന്നോ ?

MR. K. R. RAMASUBBA SASTRI : Because I was a judge and I have realised the difficulties of the accused, I am able to say all this.

And then, in many instances, the Magistrate is transferred and there is retrial by the new Magistrate. In these circumstances, Sir, when things are so bad for the accused even, even his innocence is presumed, why should we provide that he should be presumed to be guilty ?

Coming to the actual conditions of the present day and the extent of control that the parent is able to exercise on children, Sir, co-education and free mingling of boys and girls has become the order of the day. There are not many children who are subject to the control of

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the parent; and practically no control is possible when a person has half a dozen children to look after. Sir, when a man has half a dozen children, is he to earn his livelihood, and enough money to maintain his family and to educate his children or to run after that particular son or daughter of his who has run away with some girl or boy? And, not only has he to run after such child and bring him back with his new wife, but has to appear before the Court as an accused and let in evidence to prove that he was not negligent and that he did everything in his power to prevent the marriage. Sir, I shall refer to an actual incident that happened in a Brahmin family, which would show the extent of control the father has over his children nowadays. A boy who was studying in Madras one fine morning wired to his father who was living near Tinnevelly "Girl worth a Kingdom; marriage settled; come immediately." (*Laughter*). The poor father had absolutely no previous intimation of it; and he had to find money for his wife and himself to go to Madras. He went to Madras, attended the marriage and blessed his son and daughter-in-law. Sir, that is what is happening nowadays. What will the poor parent do? My friends now say that the father should be presumed to be guilty for the fault of having begotten such children. Sir, it is all due to co-education, and city life. In villages, even now the girls are modest and obedient to parents, and care for public opinion; they are amenable to discipline to some extent. But, the moment a girl comes to a town, she is introduced in society, she gets new ideas of fashion and moves freely with boys. She loses all her modesty and defies public opinion. And, in all these she is being led by so-called women workers, leaders, who preach to her that she need not care for her parents, that she should throw off her modesty and move freely with men on an equal footing. Modern girls are more for the opinion of Lakshmipathies.

PRESIDENT: Order, order.

MR. K. R. RAMASUBBA SASTRI: The only right or responsibility of the father is to send money orders to his children once every month.

Take her into society. Then you will find that she is under your influence no longer, that she has a swelled head in reference to her duties and all manner of things, with the result that one fine morning the father may find that she has absolutely nothing to do whatever with the desires of her father or mother but cares only for her opinion of some public patriot or a Lakshimipathi who has taken her fancy. And the poor, unfortunate father is under the liability of having to find the money to send her an M. O. at the beginning of every month. The girl or the boy is entirely under the control of other influences, both natural and unnatural.

With reference to this Bill when it was being passed in the British Indian Legislature all the evils of late marriage were pointed out and were all put in a journal so that everybody may read it. I shall just quote from that journal to say that the parents have lost control over the youth of the nation.

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"Not a year elapses without hundreds of unmarried girls giving birth to babies in England—John Bull".

"Virginity no longer exists in England—Mr. T. P. Partington, F. I. C.' F. R. E. S."

"Early marriage is the only solution for abortion, unmarried mother hood etc.,—Dr. Paul Bellard":

PRESIDENT: Order, order. The present discussion is not about early marriage generally, but only with regard to the proviso as to the fastening of culpability for negligence.

MR. K. R. RAMASUBBA SASTRI: I am simply reading these passages not so much to show that the Bill itself is not proper. I am relying upon them to show what little influence the unfortunate parent has over his boy or girl once that boy or girl has come into existence and has escaped into towns and cities for the so-called education with the advantages of girls of moving freely in society on account of co-education.

"All parties are united in the opinion that Hindu married state is an exceptionally happy state—Mr. Frederic Pincott".

Dr. Walter Gremlin of Germany says—

"Only 4 out of 133 men and 5 out of 120 women denied having had premarital sexual experience; in 20 p. c. of the cases conception had taken place while 25 of the women confessed to having given birth to children; we must do something to bring the time of legal marriage close to that of the first sexual experience".

I have read all these passages to show that, after all, it is very difficult for a parent, especially a parent who happens to have a large family to control each member of the family when one member has started for purpose of education. So far, I submit that this provision causes a great hardship to the unfortunate parent because he might be dragged at any time to the court, to the detriment of his business and of his earning. Some members said that without this provision the Bill would absolutely become inoperative. It is not so. Even if it becomes a dead letter we do not care. But a Brahmin parent should not be punished and prevented from earning his livelihood simply because he has got a few children. If one boy gets out of control, are the other children to suffer? One of my friends suggested that the father must go in a motor car in search of the disobedient boy. When the father reaches one place, he will find that his son has left that place and so the father will have to go from one place to another. That is because there are ever so many people to encourage him and say—you are perfectly right in exercising your right against the old, senile man who has lost his brains. That is the condition of society in which unfortunately we are living at present. I do not mean to say that the young people are in any way vicious themselves. But unfortunately curiosity is a factor which has to be taken into consideration in all these matters. In one of our Puranas it is said that a Rishi who was married thought that the best way of making his wife obey him was to say exactly the opposite of what he wanted. It was only that she would disobey him and the Rishi would be saved the trouble of getting her to his view. Otherwise she would insist on her view and the Rishi would be never left in

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peace, So, curiosity is a very strong factor which is unfortunately prevalent in many of the young people who err not so much because they are in the way of sex development but because of the conditions under which we live at present. Many boys and girls are curious and they think that any indulgence on their part will not affect their future career and if unfortunately a boy of fifteen and a girl of twelve happen to run away to the Registrar's Office to get themselves married, the poor unfortunate father whose responsibility was to send an M. O every month will be hauled up. I say that is certainly a very unfortunate circumstance for the parent to be in. Therefore this provision which is against the fundamental principles also ought not to find a place in the statute book

Then it is said that the Brahmin parent cannot be trusted with the care of his child, tha' he cannot be trusted to look to the interests of his child. I would quote an ancient sloka which mentions the troubles that a parent has in finding a proper bridegroom for his girls. The sloka is this --

കന്യാപ്രശ്നിൻരൂപം പിതാവിദ്യാ മാതാധനം

ബാന്ധവാ കുലവിഭവം മിഷ്ടാന്ന ഇതരേജനാഃ

"The girl's attention is about the figure of the bride-groom whether he is beautiful or ugly; the mother is anxious about the whelth and future prospects of the bride-groom; the father looks to the character and education of the boy; the relatives about the family, clan or race, while all others are concerned with the prospects of a free feast, tamasha or free programme of musicians, entertainments etc."

Now, if any student or boy with a fair complexion and a specious tongue happens to persuade a girl to run away with him, the girl will be undone. Her curiosity may be satisfied for the time being but nobody will accept her again. So far as the Brahmins are concerned, the whole community will come down if this Bill which is after all a social legislation and which ought to be permissive and not compulsory is adopted. Let the Bill come, but why should I be further penalised and dragged into the criminal court to adduce evidence that I had no hand in the elopment of the girl or that I had nothing to do with the boy. I submit that the provision is a monstrous one and on the face of it, it should not have been pressed so hard by the members.

This provision is against all principles of natural justice. I submit that a Brahmin should not be penalised simply because he happens to have a large family. I have heard, that in Scotland in ancient days there was a law that a girl should be punished for infanticide if she did not communicate the fact of her pregnancy to her relatives. Sir Walter Scott, in one of his beautiful novels, "The Heart of Midlothian", has written about the working of that law. That was about 200 or 300 years ago. Now, under conditions of modern civilization my friend say that the very same provisions should be enacted agains us Brahmins, simply because we happen to live under conditions i,

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which we have lost control over our children. The present day conditions are the same for parents belonging to all communities, with this difference that in the case of the other communities they can afford to wait and see that the marriage takes place after the attains puberty. Except for that slight difference, every parent who has any affection for his children will know what difficulty he has in controlling the children and effecting proper marriages for his boys and girls. In my opinion the difficulty with reference to this child marriage would have been avoided if a property law was enacted.

PRESIDENT: Order, order. The honourable member will have to keep to the particular amendment.

MR. K. R. RAMASUBBA SASTRI: What I wanted to submit was that under the circumstances, when he cannot provide for his daughter, he cannot possibly avoid her finding a husband for herself. Naturally she feels the sooner she finds a husband the better go, it is quite likely that the first specious beggar who says that he can protect her, induces her to run away with him. It may be that he will not give her even a chance of marrying him. The father may have to threaten him or the statute for legalising the marriage will have to be invoked. But the girl for the present is undone. So, it is absolutely unnecessary that a Bill of this kind should be brought in at all. At least the violation of the fundamental principle, that every man shall be presumed to be innocent until the contrary is proved, should not be allowed in favour of a piece of legislation which is after all not a very salutary one. It is aiming at social reforms which, after all, are not called for.

I may submit to the House a petition rather an opinion, signed by 29 vaidiks of the locality, where they all say that pre-puberty marriage should as fat as possible be encouraged. I only bring it to the notice of the House, thought it may not perhaps be relevant with reference to the particular question we are now discussing.

I therefore pray with all the earnestness that I can command that the members of this House should not increase the difficulties of the unfortunate parent by insisting on this criminal provision also being tacked on to the Bill which is absolutely unnecessary and which might be still-born, for aught we care.

MR. E. SUBRAMONIA AIYAR: Sir, I am extremely thankful to many of the honourable members who spoke against the amendment. As I understand them, their chief objection to the acceptance of the amendment.....

PRESIDENT: Order, order. The House will now adjourn *sine die*.

The House adjourned *sine die* at 5 P. M.

A. GUNAMONI,
Secretary to the Sri Malam Assembly.

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